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ABSTRACT

Second in a series of seven volumes containing the proceedings of the 1983 Australian Family Research Conference, this publication deals with family law. Papers and authors included are: "Attitudes of Divorced Men and Women to the Family" (Margaret Harrison), "Dispute Resolution in Australian Family Law" (Henry Finlay), "Descriptive Analysis, Process and Outcome of a Caseload of One Hundred Migrant Cases Seen in Counselling" (Emilia Renouf), "The South-west Aboriginal and Family Law" (Eversley Ruth), "The Outcome of Defended Custody Cases: Does the Father Have Much Chance?" (Frank Horwill and Sophy Bordow), "Evaluation of Court Referred Conciliation Conferences" (S. Bordow, A. Marshall, and M. Turner), "Severe Conflict in Matrimonial Proceedings" (Gianfranco Urlini), "A Study of Access Patterns between Three Groups Differing in Their Post Separation Conflict" (Robyn Weir, Rosa Silvesto, and Lynette Bennington), "Adolescents and Divorce: The Experience of Family Break-Up" (R. Dunlop and A. Burns), "Children's Wishes and Legal Outcomes: Is There a Relationship?" (I. Thomas and T. Pietropicolo), "School Adjustment in Children from Families Experiencing Marital Problems" (Lynette A. Bennington), and "Some Social, Economic and Relationship Effects following Marital Separation" (G. W. Smiley, E. R. Chamberlain, and L. I. Dalgleish). (RM)

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VOLUME II

Family Law

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AUSTRALIAN FAMILY RESEARCH CONFERENCE

Held at Burgmann College, Australian National University, Canberra, 23-25 November 1983

PROCEEDINGS

VOLUME II

Family Law

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Volume VI: Family life
Volume VII: Closing address and index

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Attitudes of divorced men and women to the family court

Margaret Harrison
Institute of Family Studies

There is very little published research concerning the attitudes of clients towards the legal system in the context of divorce. In the United Kingdom, Elston, Fuller and Murch (1975) examined the rationale for judicial hearings of undefended divorce petitions and used petitioners' comments as a central part of the examination. The study revealed bewilderment about the real nature of the hearing and surprise at its brevity. Many people, in retrospect, could not understand why they had had to go to court at all.

In the United States, Spanier and Anderson (1979) examined the impact of the legal system on adjustments to marital separation. Their sample of 205 separated and divorced people was drawn from a population of couples who separated within 26 months of the interview. Interviews took place in Pennsylvania in 1977 and 76 per cent of respondents had divorced under the fault divorce legislation operating in that State. The respondents indicated considerable opposition to the fault element in the legislation and 55 per cent of the total sample expressed dissatisfaction with the entire legal process. This included the laws, judges, court legal staff and private lawyers. However, opinions about the court itself were not apparently surveyed and sex differences were not analysed.

Burns' (1980) New South Wales study of people who had separated or divorced between 1970 and 1975 included questions on attitudes towards the court. She found a reasonably high level of satisfaction with the court, with about two-thirds of the sample regarding the proceedings as reasonable or very fair and efficient. However, men were less satisfied than women, and tended to mention unfairness and inefficiency more frequently. Burn's study was carried out before the Family Law Act came into operation, and comments in her report appear to refer mainly to the Magistrates Courts.

In summary, the attitudes held by divorced people towards the court have been largely ignored in studies focussing on marriage breakdown. The studies described above were not designed to investigate such attitudes and their samples are not comparable with each other or with this study in size, composition or the manner of their selection. This may account for the conflicting results found in the Spanier and Anderson research (where low satisfaction was reported) and Burns (whose study found fairly high satisfaction).

More importantly, these studies are of little relevance to the Australian post Family Law Act divorce environment. One of the central features of that Act was its establishment of a specialist Family Court - that Court has exclusive jurisdiction to grant divorces and 'shares' jurisdiction with magistrates courts in many ancillary areas. Quite likely the sources of satisfaction and dissatisfaction would have altered as a result of this Act. Certainly a good deal of publicity accompanied its passage, and allegations have featured in the media claiming that either (i) the law is inherently unfair or unsound or (ii) the administration of the law produces injustices.

In addition to their different emphases, previous studies have not looked in any detail at the nature of opinions and attitudes held or the factors relating to them.

The aim of the present study was to identify the various factors linked with attitudes to the Family Court. The results of the analysis associated with this aim are divided into two sections which involve the following discussions:

(1) General results - the nature of the various attitudes expressed about the court and the proportions of our sample expressing positive, negative or mixed opinions;

(2) The relationship between court opinions and demographic and situational factors such as age, sex, and court usage.

(1) THE GENERAL RESULTS

Respondents were asked how they felt about the Family Court and why they felt that way about it. Their answers were recorded in full and coded subsequently into major categories.

As expected, the replies to this general question concerning attitudes to the court covered a wide variety of opinions. There were examples of some respondents reporting experiences and opinions which were the antithesis of those described by other groups.

For example, the atmosphere of the court was seen by some respondents as being cold, sterile and unfriendly. There were some very vivid accounts of the court as being like a cattleyard, a sausage machine and a supermarket.

One man said the Family Court was a:

> "Very cold place. A necessary evil. You were just a number being pushed through."

Another man said:

> "Standing up in court was just a rubber stamp - it took only a few minutes - I was expecting a great emotional experience. It was like a supermarket - very cold - like a production line - 7 divorces in 10 minutes were granted. It was like going for a car licence."

Women reported similar attitudes. One said it was:

> "Cold and straight to the point. Not a helping situation."

Another woman described the Family Court as:

> "Like a factory - five minutes for a divorce ... a trauma. I was on my own. No one offered me any counselling, nothing. No one spoke to me at all."

These comments were tempered by some from respondents who remembered helpful and caring court staff. One praised the Registrar who he described as being "right down the line", another said the judge was "very concerned and interested - sympathetic" and one took a more global view of the court - "everyone I spoke to knew all the answers, but there was compassion there too."

The speed of the proceedings was referred to by respondents as both a positive and negative feature of the court. Comments such as - "good - it was easy, no hassles, only took a few minutes", and "nice and quick - it was pretty easy", were expressed by a group of respondents. However others thought the proceedings were too quick and confusing because of the speed at which they were conducted.

One man who described the court as a "cattleyard" said this was "because the procedure took a matter of minutes."

> "Both parties were incidental to them (ie. court staff) and confused by them because of the speed. Ushered in and out, presence superfluous. Although procedures was informal little was explained to us."

A woman said:

> "It was quick. I was just so stunned - walked in at 9.05, walked out at 9.10."

Several respondents were personally able to contrast the present system with its predecessor -

> "I was divorced before 1975 and I could compare the two. The first time it was frightening. This time the judge wore a suit - it was so simple, more dignified."

Another said:

> "There was nothing degrading about the divorce experience - whereas under the old system it was hard to feel like a human."

We looked primarily at responses which indicated positive only or negative only attitudes towards the court. For an additional group (15 per cent) there had been no court attendance and therefore no possibility of assessing the court. Another 15 per cent of the sample gave both positive and negative answers which meant they were classified as ambivalent in their attitudes to the court.

For example, one man said:

> "I have to say that they are biased towards the normal custodian of the children - which in most cases is the wife. Basically in dissolution of marriage females have the upper hand ... (The court was) well run, clearly handled, simple, friendly. No one was at all intimidating."

Frequencies for the question: 'How do you feel about the Family Court?' analysed according to the sex of the respondent are set out in Table 1.

TABLE 1 in here

As the table shows, negative only responses were those most frequently reported by respondents in the sample. Positive only responses made up the second most frequent category and the little or no contact and ambivalent group provided a relatively small proportion of responses.

A characteristic of the approach of the sample to this question was that people usually felt definitely positive or negative about the Family Court. Where the group who had had no court contact (and therefore no expressed court opinions) was excluded from the total, 83 per cent of respondents were unambiguous in their attitudes.

The table also shows that the men were more frequently negative about the court than the women. Details of and suggested explanations for different reactions of the sexes are contained in the later section of this paper.

Table 2 sets out the qualitative responses to the question asked of respondents as to why they felt positive or negative about the Family Court. Many respondents gave more than one answer and therefore percentages exceed 100 per cent and the number of responses exceed the number of respondents.

TABLE 2 in here

Positive responses

The most frequently reported positive comment about the court was that it was good, efficient and quick.

One woman said she thought the court staff were "brilliant" and everything was easy and straightforward.

Another positive comment came from a man who said:

> "I think it's excellent, efficient, polite, realistic, fine. I get cross when it's criticised ... its one part of the legal system which sees its job as not deciding abstract questions of law but as helping and supporting people in difficulties."

The next most common response made in favour of the court was that the procedure was easy and straightforward. As one woman put it:

> "I liked the quickness, smoothness - didn't feel freaky or different about it."

Another woman said she was:

> "Pleasantly surprised - far less traumatic than I expcted - impressed by it, everything over in 3 minutes."

A man commented:

> "Proceedings were speedy and to my satisfaction".

Sympathetic and considerate staff were referred to by respondents who were positive about the court.

One man praised the people he had come into contact with:

> "People are interested in what you're talking about - they respect what you say."

Another said:

> "It was a traumatic experience as far as I was concerned but I found it as personal and humane as it could be ... I found the judge understanding".

Negative responses

The most common negative response was that the court was biased and unfair. This was a response frequently made by men and these are often directed towards custody and access issues.

One man who obtained custody of his children complained that the court was very biased in favour of the mother and would not let him speak freely. He went on to say:

> "I can understand how judges get attacked. All I had from the settlement was my clothes, the children's clothes and their beds."

Another man called the court:

> "the sausage machine. No matter the merits it all comes out the same, all in the woman's favour - my access dropped in half and this really soured me."

One woman remarked:

> "I do think they help the woman much more than the man. I do think there should be a law making it easier to men paying maintenance - women get away too easily."

Open hostility was expressed by one man who lost custody of his children.

> "If I had a machine gun I'd shoot them. I'd made arrangements to look after the kids and I'd looked after them for elevan and a half months already. The court is biased in favour of women".

Another man who felt the Family Court experience had been a totally negative one for him summed it up as follows:

> "You lose the use of the house, you don't see the kids, you pay maintenance and you pay all these legal costs, you just lose all along the line."

Some were surprised that their divorce did not receive the attention they thought it warranted, and that the procedure was rushed and seemingly automatic. Words such as "sausage machine", "conveyor belt" and "mechanical" were used by both men and women. For example:

> "It seems a fairly stereotyped proceeding".

> "They seem to me as though they don't really look at each case individually. It seems in the first hearing he just asked the solicitor if everything had been worked out to mutual satisfaction, then 10 seconds later it was over. He didn't *judge* at all. He didn't really know to what extent mutual agreement had occurred."

One man explained:

> "In one way I was hoping that by starting some form of action she might be prompted into making up her mind to come back. Then when we got to court it was too quick ... the judge seemed to be nothing more than a puppet, a rubber stamp ... it just seemed to be a rubber stamp act."

Negative comments were also sometimes directed at specific problems such as repeated adjournments, a lost file or the inability to enforce a maintenance order.

Others felt oppressed by the legalistic atmosphere of the court and either felt angry that they were unable to communicate with the judge to explain their version of events, or were frightened by the proceedings. Anger was a characteristic of mens' responses and fear was mentioned more by women.

Frustration was reflected in the following comments of these two men in the sample.

> "I never had a chance to stand up for myself. You're in there and you're out five minutes later. No explanations - nothing - you can't say anything. The judge never offered me a chance to ask for a reconciliation."

> "I feel I should be able to speak to the judge myself and the judge shouldn't have to talk to me through my lawyer."

Men also tended to argue in favour of the re-introduction of fault, or at least some taking into account of the details of the marriage breakdown. One man complained that he had to pay his ex-wife $11,000 in a 3 months period. He argued:

> "Really she's the one who left the house, and I've got custody and I've got to pay her all that money and I've still got to pay for the house. She's living with her parents and still seeing the other fellow."

Another man said he thought the judges should go more into the facts behind the marriage breakdown, but "the solicitors say you're going to lose in any case, that your wife will get half of everything."

For many others their responses indicated that it was their first appearance in court for any reason. This produced feelings of fear and uncertainty which sometimes later appeared frustrating because they were unwarranted.

One woman in explaining how terrified she felt at the court said that she thought this was because she thought of courts as places "where people go who have done something wrong - like murder".

Another said:

> "I felt a bit lost. I didn't feel right. I didn't know who to ask, what questions to ask. I felt as though I didn't make use (of the court) ... afraid of court proceedings, lacked confidence, too afraid of whole procedure."

Another woman said:

> "I think the whole experience was scary and foreign. I had to wait for two hours with hundreds of other people with my husband who was making snide remarks the whole time - by the time we saw the judge I would have agreed to anything just to get out of there. It was like nothing I'd ever experienced - it was horrible."

Some men also felt wary of the proceedings. As one man explained:

> "I didn't like it because I was unfamiliar with courts - I was not particularly relaxed. I was apprehensive".

(2) FACTORS LINKED WITH OPINIONS OF THE FAMILY COURT

We sought to find out more about the people who were expressing positive only or negative only attitudes, and to attempt to identify the factors that may have contributed to the differences in attitudes.

As marriage breakdown is a process which implies a wide range of possible experiences, changes and adjustments, a great range of varied responses must be expected from any sample of divorced people.

Many factors would have been linked with the Family Court and the decisions made as a result of court proceedings arising out of custody, property and maintenance disputes. It is possible that people's experiences in the Magistrates courts would have also coloured their view about the Family Court, but we had no way of assessing whether this occurred or not.

In this section we will go beyond a simple examination of the facts that took place and, where possible, will examine the way in which respondents understand or interpret these experiences.

The first factors to be looked at are general characteristics such as gender and age, which relate to broad variation in general experiences.

General Characteristics

The aim of this section is to examine some of the major demographic characteristics which may affect the variation of opinions about the Family Court. These characteristics alone cannot explain opposing views but they provide clues for the direction of further enquiries. For instance, if we find that attitudes towards the court vary with factors such as sex, age, or the presence of children, further investigations can then be directed at the nature of the experiences of people in these various sub-groups that might be relevant to court opinions.

Note that sub-groups of respondents who reported that insufficient court contact meant they could not express an opinion, and those whose responses showed an ambiguous attitude towards the court, are excluded from this analysis. The following discussion is based on the responses of those 207 respondents who were either unambiguously positive or negative about the Family Court.

1. Gender of Respondents

The gender of respondents represents the first obvious characteristic that may be linked with opinions about the Family Court. Burns' (1980) study and popular literature suggests that men are less likely to be satisfied with the decisions surrounding their divorce than women.

Discussion contained in the earlier section of this paper reinforces the view that men are a negative group as regards the court. Their criticisms also tended to be different in nature from those of women.

A later section of this paper describes the apparently more passive role played by men in the recognition of marriage breakdown, the decision to separate and to institute divorce proceedings. It might be argued that men's negative feelings about the court are related to a general antipathy to the divorce process which suddenly altered their lives.

Another section describes the sense of grievance men appear to feel when they report high court usage. Table 3 shows the distribution of unambiguously positive or negative comments about the Family Court expressed by men and women in the sample.

TABLE 3 in here

2. Age of Respondents

We would expect marked differences in appraisals of the court according to the age of the person interviewed. Young childless couples will have fewer decisions to make about matrimonial assets and will have had a different marital 'investment' from middle-aged couples with children. The implications of divorce for the older couples whose marriage has been of long duration and whose children are all independent would also be expected to differ from those of their younger counterparts (Berardo, 1982).

The sample was divided into three age groups, with age at the time of the interview being the age relevant for this purpose. These groups were: respondents, aged between 20 and 34 years (who comprised 38 per cent of the sample) those between 35 and 44 years (33 per cent of the sample) and those aged between 45 years and over (29 per cent of the sample).

The relationship between unambiguous attitudes to the court and the age of the respondent varied for the men and women, as Figure 1 shows.

FIGURE 1 in here

Men in each age group were more inclined to disapprove of the court than they were to praise it. This trend was strongest for those aged between 35 and 44 years, where 74 per cent of men reacted negatively to the court. The youngest group was more evenly divided in its opinions - 42 per cent of men between 25 and 34 years were positive about the court and 58 per cent expressed disapproval of it.

Much greater differences in attitudes were apparent for the three age groups of women. Those aged less than 45 years tended to praise the court, a trend that was particularly marked for the 35-44 year old group. 63 per cent of whom expressed approval. (This contrasts dramatically with the same age group of men which contained the highest concentration of negative opinions).

The oldest group of women (those aged 45 years and more when itnerviewed) was more inclined to criticise the court than it was to praise it.

As we have relatively small numbers of men and women in each age group who gave unambiguously positive or negative responses about the court, we cannot investigate in any depth the age-related factors that may have contributed to the trends described above.

However, it could be argued that men in the middle age category were those with most to lose from court proceedings. They were the men with the highest proportion of children present at the time of the divorce application, and the highest rate of reporting problems with court costs. Various 'clues' pointing to the seeds of their dissatisfaction are discussed throughout this paper.

Women's dissatisfaction and criticisms proved more difficult to categorize. Analysis completed but not included in this paper suggests that their worries stem from a feeling of economic vulnerability which they perceive as being a result of the marriage breakdown.

3. The Existence of Children

The existence of children under 18 at the time of the filing of any Family Law Act proceedings increases the likelihood of solicitor and court contact and may affect respondents' attitudes to the court because of the intense emotions involved where arrangements for the children require negotiation. An implication arising from this also is that where there were no children of the marriage, or no children under 18 at the time of divorce, there would be less potential for bitterness about the court.

Sixty nine per cent of men (n=84) and 65 per cent of women (n=56) had children under 18 at the time of the divorce application. The children were not necessarily living with them, but in fact nearly all female respondents with dependent children were living with them, whilst this was an unusual arrangement for men in the sample.

There was no obvious relationship between the presence of children in a marriage and attitudes to the court, for either men or women. However, for both sexes, there was a slight trend for those without children to be more positive about the court than men or women with children . Table 4 shows this trend.

TABLE 4 in here

The existence of children under 18 at the time of the divorce application does not necessarily suggest that attitudes about the court will be affected one way or another.

In a later section which discusses court usage by respondents custody arrangements and their implications for opinions about the Family Court are examined.

CONCLUSION

In conclusion, both the gender of respondents and their age affected unambiguous attitudes to the Family Court. Whilst men of all ages were negative rather than positive about the court, this was partiuclarly the case for men aged between 35 and 44. Women were more often positive about the court than negative, except for the oldest group of women. The birth of children who were under 18 when the divorce application was filed did not appear to affect court attitudes.

COURT USAGE

In this section we examine the experiences of respondents in the Family Court system, their degree of contact with the court, the outcomes of proceedings and their financial cost.

We expected that these variables would have a strong relationship to court attitudes because they are so intrinsically a part of the actual experiences from which attitudes are formed. We expected that negative opinions about the Court would increase as court usage increased. Court usage is a measure of hostility, particularly for men.

1. Registry

Respondents were selected for inclusion in the study from the files of all 1979 divorces processed through the Melbourne, Parramatta or Perth Family Courts (also known as registries).

It was expected that attitudes to the court would be influenced, in part, by the specific attributes of the court which handled the divorce and any ancillary proceedings. For example, the courts in each state will vary in their staff-client ratios, the number and quality of facilities and the staff personalities. Whilst it is impossible to identify the characteristics of a particular court (and these are no doubt seen differently by different clients) the selection of Melbourne, Parramatta and Perth was based on certain criteria. The Melbourne Court is the busiest Family Court in Australia and had a reputation for being the most litigious. The Parramatta Court is situated in a busy area of Western Sydney, with a mixed ethnic and socio-economic population and has a strong counselling component.

The Perth Family Court is the only state Family Court in Australia and operates as the only Family Court in the Perth metropolitan area (magistrates courts have no Family Law Act jurisdiction in that area).

FIGURE 2 in here

As figure 2 shows, where the responses for men were looked at the percentage of men who were negative about the court was highest for those from Perth Court and lowest for those from the Melbourne Court, but the differences were only small.

For women the negative responses of those who had been divorced through the Parramatta Court were considerably higher than those from the Melbourne or Perth Courts.

Men were likely to be negative regardless of which registry had processed the divorce. For the women there was a marginally greater tendency to praise the court rather than criticize it, at least among the Perth and Melbourne sub-samples, and a greater tendency to criticize than praise amongst those from Parramatta.

As no strong trends or explanations were present the analysis of registry differences was not pursued further.

2. The Divorce applicant

We asked respondents whether they or their former spouse had applied for the divorce and 56 per cent of those with unambiguous attitudes about the court reported that they had - 51 per cent of the men and 65 per cent of the women said they were the applicants in the divorce proceedings.

Recent American research has suggested that fault divorce legislation encourages the male to take a passive role in intiation procedures, whereas no-fault law such as in the Family Law Act produces a reversal of sex roles, with men more likely to both initiate and complete divorces (Gunter and Johnson 1978). Weitzman and Dixon (1982) explain the tendency for Californian wives to initiate proceedings where divorce was based on fault as being probably due to norms of chivalry, plus pragmatic reasons such as the ability to obtain maintenance and more than half of the community property.

This study was not designed for such analysis. It is impossible to obtain any pre- Family Law Act figures to indicate a change in filing patterns with the introduction of no-fault divorce in Australia. In addition, the Act's complete separation of divorce proceedings from ancillary proceedings means that there is no strategic advantage involved in divorce filing. All we can say is that more women in our sample report that they started proceedings for divorce than men.

With the apparent absence of social stigma about divorce in most sections of society, it was assumed that there would be no sex differences in divorce filing behaviour.

However, statistics collected by the Australian Bureau of Statistics since the Family Law Act came into operation show that for the registries included in this study and for Australia as a whole more women than men have consistently filed for divorce. These figures are shown in Table 5.

TABLE 5 in here

Whoever started the divorce proceedings was presumed to be the person who most wanted the divorce. It was therefore expected that positive court attitudes would be associated with divorce filing, as the Family Court had brought about the required dissolution of the marriage. As table 6 shows there was in fact no statistical relationship between divorce filing and Famiy Court attitudes, for either men or women.

TABLE 6 in here

3. Extent to which ancillary orders sought

The filing of ancillary applications is one measure of hostility between the parties. Ancillary applications (apart from those seeking an order regarding matrimonial property) can be instituted at any time after separation, whereas 12 months separation must precede any divorce application. Therefore, ancillary applications may pre-date or post-date a divorce application. They may also pre-date or post-date a private agreement.

We asked respondents which proceedings (except for those for principal relief) were started after the final separation. Twenty three per cent of the sample reported that no ancillary relief had been sought and equal percentages of men and women in the sample said this. As expected, for both sexes the youngest age group of respondents showed the highest percentage of divorce - only applications and the middle age group (where there was a higher percentage of dependent children) showed the lowest percentage.

TABLE 7 in here

As table 7 shows, the relationship between ancillary applications and criticism of the court was significant for men but not for women. Thirty six per cent of men with divorce-only matters were negative about the court, whilst 72 per cent of those with one or more ancillary applications were negative. Corresponding figures for women in the sample were 40 per cent and 51 per cent.

4. The presence of ancillary orders

In any branch of the legal system in which negotiations between the parties take place prior to a hearing more applications are frequently filed than are ultimately pursued. The filing of an application in the family law jurisdiction may occur to notify the 'other side' of an optimal outcome and to act as a show of strength. It may result in a settlement of matters after private discussions between the parties, following legal advice, the holding of a Regulation 96 conference or a counselling session. Applications may be filed by a respondent in answer to those by his or her spouse to indicate a counter show of strength.

Thus, an application does not always result in the making of an order but an order cannot be made in the absence of an application.

We asked respondents what ancillary orders were made. (As all respondents had an order dissolving their marriage we excluded this from consideration).

We expected that the presence of orders would relate to negative feelings about the court, particularly for men. The presence of orders is both a measure of hostility between the parties and a measure of court usage.

Thirty two per cent of the sample of respondents with unambiguous attitudes about the court had no ancillary orders made and this was the case for almost equal proportions of men and women.

For both men and women the presence of at least one ancillary order increased the incidence of critical comments about the court. Women were more likely to praise than criticize if there were no orders, but the difference between the percentage praising and criticizing was not very great if they had orders. (43% - 57%) For men, with one or more orders corresponding figures were 27 per cent positive and 73 per cent negative.

TABLE 8 in here

Men were therefore more likely to criticize the court where there is at least one ancillary order than women were.

The probable explanation for this is that men perceive orders as involving a loss for them - custody orders are usually made in favour of a wife, as are maintenance orders (at least where there are children), and property settlements may give a woman occupancy of the house until the children reach adulthood. Women are therefore seen by men as the winners. Women apparently are not elated about their success in legal proceedings, as 49 per cent were unambiguously negative about the court, 43 per cent where there were ancillary orders present.

As expected, a higher percentage of men and women aged 35 - 44 years had orders compared with the other age groups, but the incidence of orders was greater for the men in this group than the women - in fact, only three of these men reported that no ancillary order was made.

5. Custody of Children

In addition to asking respondents how many ancillary orders were made, we asked what type of orders they were. The order that appeared to be most relevant to court attitudes was custody, although a consideration of custody meant that childless respondents had to be excluded from the analysis.

(i) Who got custody of children

We asked all respondents with children who got custody of the children. This question was asked of all respondents with dependent children and was answered regardless of whether custody was decided privately or by an order of the judge.

We expected that men would rarely be the custodians of children and that they would be most negative about the court where their former wives had custody.

The women in the sample reported that they obtained custody in 91 per cent of cases involving dependent children. Their former spouse had custody in 4 per cent of cases and in the remaining 5 per cent custody was split or joint. Men answered that in 16 per cent of cases they obtained custody, in 73 per cent custody went to their former wife and custody was joint or split in the remaining 11 per cent of cases.

These figures are similar to those reported in previous studies and summarized in Horwill and Bordow (1983).

The figures confirm the widely held belief that in the 'distribution' of children following separation/divorce the mother is almost invariably the parent with care and control. However, it is a crude measurement of parental preference as a question such as 'who got custody' gives no indication of who wanted custody. One or other of the parents may have shown no interest in looking after the children or may have been unable to care for them. For example, several of the men in the sample indicated that their former wives were excellent mothers and they thought the children were better off in their care.

Not surprisingly therefore the mere presence of children with one or other parent appeared to bear no relationship to unambiguous court attitudes.

(ii) Presence of custody order

Despite the absence of fault criteria in the Family Law Act and in decisions involving children, parents still talk about 'winning' and 'losing' custody, custody proceedings have all the characteristics of a contest, and children are an important 'prize'. The way in whch custody was determined was considered to be of more importance than general custody arrangements. A judge order implies the presence of considerable hostility which has been undiluted by counselling. It is usually accompanied by the disadvantages of emotionally draining and financially costly legal proceedings.

The 'custody order' group was therefore expected to be a negative group in its attitude towards the court, particularly where (as in the case of men) their efforts to obtain custody were unsuccessful.

Several recent Australian studies have shown that fathers have a greater likelihood of getting custody in fully contested cases than they do in uncontested cases (Horwill, 1979, Horwill and Bordow 1983). However, in this study there were recurring indications that respondents were confusing defended and undefended custody cases. Practitioners and court personnel report that it is not unusual for clients to believe that a divorce application containing (as it must) proposed arrangements for the children, and which results in the granting of a decree of dissolution, includes a custody order enshrining the arrangements for the children.

It was considered unlikely (given the random nature of the study sample, the reports of costs paid and numbers of applications made) that judge orders were as frequent as respondents reported. However, it was assumed that those respondents who reported a judge made order believed it had been made.

Forty two per cent of the sample - 40 per cent of men and 44 per cent of women - said a custody order was made in their case. This represented 57per cent of all men with children and 66 per cent of all women with children.

Where men reported the presence of a custody order they said they obtained custody in 17 per cent of cases - where women reported such an order they said custody was granted to them in 93 per cent of cases.

The prediction about the presence for women as custodians in apparently disputed matters was therefore borne out, with the proviso that there was no objective yardstick as to whether a judge order had actually been made.

The absence of a judge order should not lead to a conclusion that custody was not at some stage disputed, nor that its 'loss' or 'gain' did not produce strong emotional reactions among respondents and their former spouses. Some men and women may have wanted custody but not contested it because they were told they would not succeed, thought a dispute was bad for the children or lacked financial resources necessary for a court case. Others may have settled their case after a counselling session or regulation 96 conference.

The presence of a custody order appeared to influence mens' attitudes towards the court, with 75 per cent of men who said there was a custody order reporting negative attitudes, contrasted with 53 per cent who were negative in the absence of such an order.

There was no relationship between unambiguous attitudes to the court and the presence or absence of a custody order for women. Fifty four per cent of women with a custody order were negative about the court compared with 53 per cent of those with no such order who had negative attitudes.

TABLE 9 in here

The highest percentages of custody orders for both sexes was found amongst those who were aged between 35 and 44 at the time of interview. This was the group with the greatest proportion of dependent children.

6. Costs of proceedings

Legal costs can vary considerably. Although actual court costs are restricted to the document filing fee, legal fees (where barristers and/or solicitors are involved) can amount to large sums, depending on the complexity of the case and the competence of the practitioners.

In some cases the filing fee may be remitted,in others respondents may prepare their divorce documents and appear themselves at the hearing of the divorce thus incurring no legal fees, and in others the granting of legal aid will minimize or eliminate costs.

Respondents with unambiguous attitudes about the court were asked how much their proceedings cost.

Where no costs were paid the respondent was presumably either:

i) fully legally aided for all proceedings
ii) was legally aided and/or had fees remitted
    (ie. filing fee is waived)
iii)was not the applicant in the divorce proceedings,
    therefore required no legal advice or court
    expenditure,
    or,
iv) had fees paid by a third person.

In some cases respondents (often men) reported that the fear of high costs was a deterrent to court usage. For example, a man who was concerned about his ex-wife's care of the children said:

> "Every way I went it was going to cost me big money - $3500 - $4000- to get custody. But I didn't have the money although I had lots of affidavitsabout the way she wasn't taking care of them".

And a man was satisfied with the court had served him well but was cynical about why:

> "It's a very practical way of doing things provided there's an agreement between the couple. If you contest things the lawyers sit back and rub their hands (and) make a packet out of you."

Another dissatisfied man explained:

> "I ended up signing a consent agreement. Not happy with it but it had been going on for months and costs were mounting up."

Comments such as these indicated that court attitudes would be negatively affected by high costs of proceedings, especially for men.

TABLE 10 in here

As table 10 shows, there was a very strong relationship for both men and women between high costs and negative court attitudes. One unexplained anomaly is that those who said they paid nothing were more negative than those who paid up to $500.

In addition to the objective question of what exactly the costs were, respondents were asked whether payment of those costs had been a problem for them.

This question was asked because it was realized that people with different resources would react differently to paying varying amounts of money.

Forty one per cent of the sample said the payment of costs was a problem for them, with a higher proportion of women than men indicating this.

Men once again appeared to react negatively to the court where they reported having problems with costs, more so than women.

TABLE 11 in here

7. Attitudes towards lawyers

Respondents were asked how they felt about the way their solicitor or barrister treated them and handled their case and why they felt that way. We expected assessments of lawyers to be closely related to court usage and thereby court attitudes. Whilst a divorce can be obtained without any lawyer contact it is most unlikely that ancillary relief would be sought without legal advice also being sought.

Moreover, a lawyer who is perceived as being helpful, attentive and sympathetic will probably be able to reduce a clients confusions and fears about the court, and may also achieve a better 'deal' over money and/or arrangements for children.

This may well enhance the respondent's view of the court process. Similarly, a respondent who achieves a good 'deal' or in some other way feels positively about the court may in retrospect attribute this success to the legal representation he or she had.

(i) General results regarding attitudes to lawyers

Few respondents in their answers distinguished between solicitors or barristers, both of whom they might have come in contact with during their progress through the legal system.

Where solicitors and barristers *were* discussed separately the solicitors were more appreciated than barristers, who were frequently only seen once and yet seemed expensive. For example, a man who was generally positive about the court said:

> "My only complaint was I didn't meet the barrister until outside the court - not even sure he knew the case properly."

Another man said he thought the solicitor was:

> "Alright but I felt the barrister was trying to make money out of me."

One man whose wife was ordered to pay maintenance to him thought the experience represented a poor investment.

> "... Two days before the maintenance case I found out he'd (ie. the solicitor) employed a barrister for me. It cost me $400 for one day. I was the mug. I got $30 total in maintenance out of that".

(His wife lost her job almost immediately after the hearing and he only received one payment).

Although responses about lawyers varied tremendously 64 per cent of the group who were unambivalent about the court and had had a legal representative rated that representative as being good, while the remaining 36 per cent said he or she was 'so-so' or no good. Men were more critical of their lawyers than women and comprised 69 per cent of those who said their legal representatives were no good.

Men's criticisms were frequently based on a general feeling of antipathy to the Family Court system, which included lawyers.

One man said:

> "I think he (the solicitor) did his best but he had no chance - a man might as well not have a solicitor - the woman gets the lot. To act on a man's behalf is to take money under false pretences."

Some men felt they were at the mercy of the legal profession because of their own lack of understanding of the court process, and recommended that the only way to get through the system unscathed was to make agreements beforehand. One said:

> "the fight is between the two solicitors in the end and we are just the pawns in the game and are the ones that suffer".

Another complained bitterly about solicitors (who he described as 'horse traders') and said:

> "the settlement and divorce is largely fought by the legal fraternity for their own benefit because those operating so frequently inside the court have the opportunity to organise the judge..."

One man who eventually obtained custody of his children but in doing so spent $10,000 in legal costs, said he thought

> "lawyers can be quite insensitive at times; they're overpaid and underworked and can't envisage the consequences of their actions to people like myself"

Another man said:

> "I was worried that the solicitors had so much power - I felt left out - I wasn't involved in it".

Women's positive comments were frequently related not only to the professional competence of their lawyer but also to his/her interest in the case and understanding of the difficulties involved. Communication was also important.

The following comments were made by the women in the sample.

> "My solicitor was wonderfully helpful and very compassionate".
>
> "He did it with a great deal of understanding and respect. He was very kind and he explained everything".
>
> "He handled everything and understood the case and made it easy for me to understand".
>
> "He was nice to me, considerate and gentle, could talk to me ... He never made me feel I was taking up time etc. I'd phone him, he was quite happy to talk".

A complaint which appeared with some frequency and was expressed by both men and women was that the intervention of solicitors exacerbated the conflict between husband

and wife. Our respondents explained these difficulties most vividly:

One woman said:

> "My first solicitor was a pig. It was the tone of his letter to my ex-husband that set the relationship as it is now. He sowed the seeds of mistrust for my ex-husband and it has stayed the same since."

Men made similar remarks:

> "Once one party gets a solicitor the second party feels they must too, and confrontation is immediately established and the argument and pain is prolonged."

> "What really made up my mind that things were finished was when I got all those sticky letters. When I confronted her with the letter she said she hadn't told the solicitor half of what was written ...There were a few occasions when she said the same sort of things about my solicitor. I got on to him and sorted him out and he said, 'you've got to fight fire with fire'."

(ii) Relationship between attitudes to the court and attitudes to lawyers

There was a strong relationship between these variables for men - 46 per cent of men who were positive about their legal representative(s) were also positive about the court, whereas only 14 per cent of those who were ambivalent about their lawyer or said he/she was no good were similarly positive.

TABLE 12 in here

The relationship was weaker where women were concerned - 55 per cent of women who said their lawyer was good also expressed positive feelings about the court, whereas 38 per cent of those who were at best ambivalent about their lawyer were positive about the court.

Thus, for the men in particular, those with negative opinions of their lawyer are also inclined to hold negative views about the court. But the reverse does not necessarily apply for those who appeared to be happy with their lawyer - some of this group were also happy with the court, others not so.

CONCLUSION

Two hundred and ninety five divorced people were asked how they felt about the Family Court and why they felt the way they did about it.

Examination of the responses to this question (which involved multiple responses) showed that negative attitudes (40%) were more frequently expressed than positive ones (30%). Fifteen per cent of the sample said their court contact had been non-existent or minimal, and an additional 15 per cent gave contradictory or ambivalent responses.

Analysis of responses of the 207 people (121 men and 86 women) who were either definitely positive or negative about the Court showed that there was a higher incidence of negative attitudes amongst the men interviewed than amongst women, and that age at divorce is also relevant to the expression of attitudes. Men aged between 35-44 years at the interview (all respondents were divorced two years earlier) and women aged 45 plus had the highest incidence of negative attitudes for their sex.

The reasons why negative attitudes were expressed were more easily ascertainable for men than for women. Relationships between unambiguous attitudes and the filing of applications for ancillary relief were significant for men, as was the making of ancillary orders, high costs, problems with the payment of costs and negative attitudes to lawyers. The only variable which produced a significant result when womens' attitudes were looked at was the payment of costs.

It appears that high court usage negatively affects mens' attitudes to the court but has little affect on womens' attitudes. Other analysis not discussed in this paper suggests that women feel more economically vulnerable after marriage breakdown, and that this produces critical comments about the Family Court.

FIGURE 1

ATTITUDES OF DIFFERENT AGE GROUPS TO THE FAMILY COURT

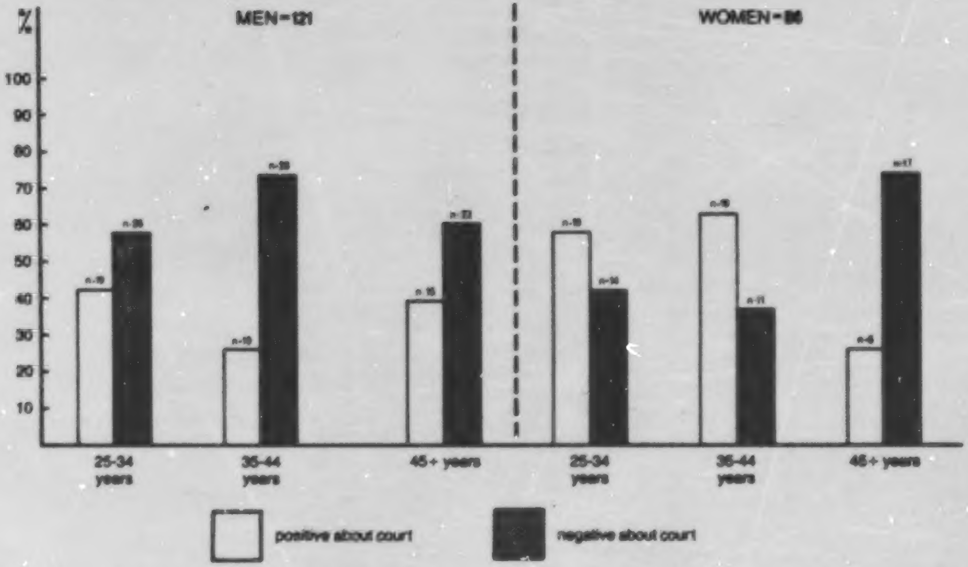

FIGURE 2

ATTITUDES TO THE FAMILY COURT ACCORDING TO THE REGISTRY WHICH GRANTED THE DECREE

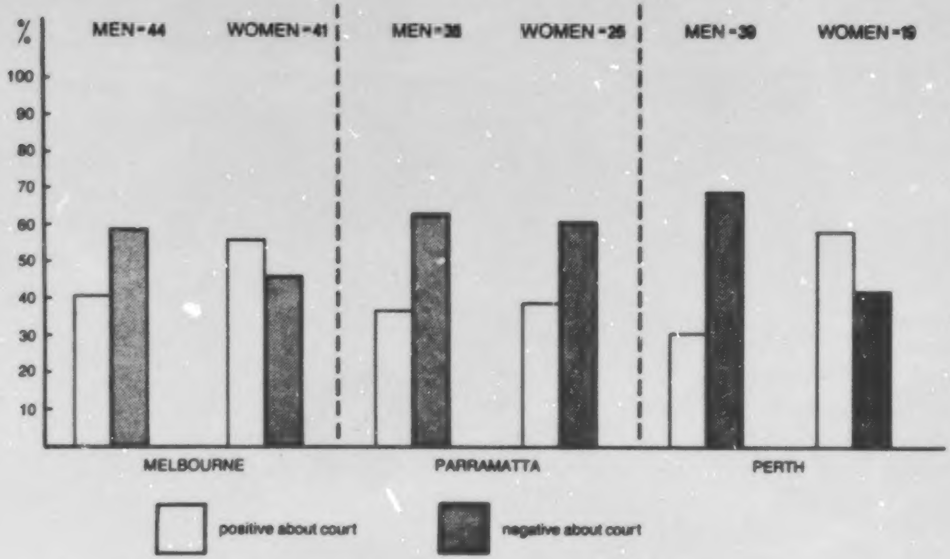

TABLE 1: FAMILY COURT ATTITUDES EXPRESSED BY ALL MEN AND WOMEN IN THE SAMPLE

RESPONSE	MEN	WOMEN	TOTAL
Positive only	25.7 (44)	35.5 (44)	29.8 88
Negative only	45.0 (77)	33.9 (42)	40.3 119
Little/no contact	15.2 (26)	15.3 (19)	15.3 45
Ambivalent	14.1 (24)	15.3 (19)	14.6 43
TOTAL	100.0 (171)	100.0 (124)	100.0 (295)

TABLE 2: HOW ALL RESPONDENTS FELT ABOUT THE FAMILY COURT

Response	Number	Percentage of responses	Percentage of cases
Indifferent	3	.6	1.0
Good, efficient, quick	58	12.1	19.9
Sympathetic, considerate	22	4.6	7.5
Easy, straightforward	29	6.0	9.9
Fair, quite good	21	4.4	7.2
Simplifies divorce	17	3.5	5.8
Other positive	12	2.5	4.1
Fulfils its function	16	3.3	5.5
Mixed, good and bad	14	2.9	4.8
Biased, unfair	57	11.9	19.5
Too easy, too quick	27	5.6	9.2
Solicitors, judge too much power	20	4.2	6.8
No privacy, crowded	13	2.7	4.5
Rubber stamp	25	5.2	8.6
Need better, more counsellors	6	1.3	2.1
No help, waste of time	19	4.0	6.5
Inefficient, too slow	17	3.5	5.8
No enforcement of orders	8	1.7	2.7
Other negative	26	5.4	8.9
No/little contact	50	10.4	17.1
Other	18	3.8	6.2
Don't know	2	.4	.7
TOTAL	480	100.0	164.4

TABLE 3: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES EXPRESSED BY MEN AND WOMEN

RESPONSE	MEN	WOMEN	TOTAL
Positive only	36.3 (44)	51.2 (44)	42.5 (88)
Negative only	63.7 (77)	48.8 (42)	57.5 (119)
TOTAL	100.0 (121)	100.0 (86)	100.0 (207)

TABLE 4: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES OF MEN AND WOMEN WITH AND WITHOUT CHILDREN AT THE TIME OF DIVORCE APPLICATION

RESPONSE	CHILDREN		CHILDLESS		TOTAL
	Men	Women	Men	Women	
Positive only	34.5(29)	46.4(26)	40.5(15)	60 (18)	42.5 (88)
Negative only	65.5(55)	53.6(30)	59.5(22)	40 (12)	57.5(119)
TOTAL	100.0(84)	100.0(56)	100.0(37)	100.0(30)	100.0(207)

TABLE 5: SEX OF APPLICANTS FOR DIVORCE 1976-81 SELECTED REGISTRIES AND AUSTRALIA AS A WHOLE

	Number of Applicants			Females as
	Males	Females	Total	% of Total
Melbourne Registry				
1976	5,190	7,729	12,919	59.8%
1977	4,057	6,794	10,851	62.6
1978	4,158	6,663	11,821	56.4
1979	3,656	5,815	9,471	61.4
1980	3,797	5,410	9,207	58.8
1981	4,003	5,766	9,769	59.0
Parramatta Registry				
1976	248	499	747	66.8%
1977	1,050	2,069	3,119	66.3
1978	1,141	2,403	3,544	67.8
1979	1,239	2,246	3,485	64.4
1980	1,483	2,350	3,833	61.3
1981	1,748	3,000	4,748	63.2
Perth Registry				
1976	1,064	1,980	3,044	65.0
1977	1,337	2,638	3,975	66.4
1978	[illegible]	2,217	3,387	65.5
1979	1,324	2,073	3,397	61.0
1980	1,397	1,676	3,073	54.5
1981	1,493	1,988	3,481	57.1
Australia				
1976	18,916	28,594	47,510	60.2
1977	16,379	28,771	45,510	63.7
1978	14,651	25,957	40,608	63.9
1979	14,648	23,206	37,854	61.3
1980	16,338	22,920	39,258	58.4
1981	17,049	24,363	41,412	58.8

SOURCE: Australian Bureau of Statistics (personal communication)

TABLE 6: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES AND DIVORCE FILING PATTERNS

Filing of Divorce Application

RESPONSE	MEN		WOMEN		TOTAL
	Yes	No	Yes	No	
Positive only	39.3 (24)	33.9 (20)	53.6 (30)	46.7 (14)	42.7 (88)
Negative only	60.7 (37)	66.1 (39)	46.4 (26)	53.3 (16)	57.3 (118)
	100.0 (61)	100.0 (59)	100.0 (56)	100.0 (30)	206

(1 missing case)

TABLE 7: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES AND APPLICATIONS FOR ANCILLARY RELIEF

Ancillary applications

RESPONSE	MADE		NOT MADE		TOTAL
	Men	Women	Men	Women	
Positive only	28.0 (26)	48.5 (32)	64.3 (18)	60.0 (12)	42.5 (88)
Negative only	72.0 (67)	51.5 (34)	35.7 (10)	40.0 (8)	57.5 (119)
	100.0 (93)	100.0 (66)	100.0 (28)	100.0 (20)	100.0 (207)

Significance (for men): P<.001
(for women): NS

TABLE 8: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES AND ORDERS FOR ANCILLARY RELIEF

Ancillary orders

RESPONSE	MADE		NOT MADE		TOTAL
	Men	Women	Men	Women	
Positive only	26.5 (22)	43.1 (25)	57.9 (22)	67.9 (19)	42.5 (88)
Negative only	73.5 (61)	56.9 (33)	42.1 (16)	32.1 (9)	57.5 (119)
TOTAL	100.0 (83)	100.0 (58)	100.0 (38)	100.0 (28)	100.0 (207)

Significance (for men): P<.01
(for women): NS

TABLE 9: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES AND CUSTODY ORDERS

Custody Order

RESPONSE	YES		NO		TOTAL
	Men	Women	Men	Women	
Positive only	25.0 (12)	45.9 (17)	47.2 (17)	47.4 (9)	39.3 (55)
Negative only	75.0 (36)	54.1 (20)	52.8 (19)	52.6 (10)	60.7 (85)
TOTAL	100.0 (48)	100.0 (37)	100.0 (36)	100.0 (19)	100.0 (140)

(Respondents without dependent children at time of divorce application excluded)

TABLE 10: POSITIVE AND NEGATIVE FAMILY COURT ATTIITUDES OF MEN AND WOMEN AND COSTS

COSTS

RESPONSE	NOTHING		UP TO $500		$501-2,000		$2,001 AND OVER		TOTAL
	Men	Women	Men	Women	Men	Women	Men	Women	
Positive only	43.7 (7)	56.3 (9)	62.2 (23)	67.4 (29)	26.1 (12)	33.3 (6)	10.5 (2)	0 (0)	43.1 (88)
Negative only	56.3 (9)	43.7 (7)	37.8 (14)	32.6 (14)	73.9 (34)	66.7 (12)	89.5 (17)	100.0 (9)	56.9 (116)
TOTAL	100.0 (16)	100.0 (16)	100.0 (37)	100.0 (43)	100.0 (46)	100.0 (18)	100.0 (19)	100.0 (9)	100.0 (204)

Significance (for men): P<.001
(for women: P<.001

TABLE 11: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES OF MEN AND WOMEN AND PROBLEMS WITH COSTS

LEGAL COSTS A PROBLEM

RESPONSE	YES		NO		TOTAL
	Men	Women	Men	Women	
Positive only	[illegible].4 (8)	40.0 (16)	48.6 (36)	60.9 (28)	42.7 (88)
Negative only	82.6 (38)	60.0 (24)	51.4 (38)	39.1 (18)	57.3 (118)
TOTAL	100.0 (46)	100.0 (40)	100.0 (74)	100.0 (46)	100.0 (206)

(1 missing case)

Significance (for men): P<.01
(for women): NS

TABLE 12: POSITIVE AND NEGATIVE FAMILY COURT ATTITUDES AND ATTITUDES TOWARDS LAWYERS

ATTITUDE TO LAWYER

RESPONSE	LAWYER GOOD		LAWYER NO GOOD		TOTAL
	Men	Women	Men	Women	
Positive only	45.8 (27)	54.5 (24)	14.0 (6)	37.5 (12)	38.7 (69)
Negative only	54.2 (32)	45.5 (20)	86.0 (37)	62.5 (20)	61.3 (109)
TOTAL	100.0 (59)	100.0 (44)	100.0 (43)	100.0 (32)	100.0 (178)

(Respondents without lawyers excluded)

Significance (for men): P<.01
(for women): NS

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Dispute resolution in Australian family law

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Introduction.

This paper is directed towards an examination of the role of the Family Court of Australia in the resolution of disputes arising within the family and justiciable in the Family Court. Thus to define the framework is to exclude significant areas of family law in the wider sense of that term. The Family Court of Australia is unable, by reason of the limitations imposed by the Australian Constitution to deal with de facto marriages, in spite of the fact that many such arrangements result in the formation and constitution of families no less stable than are many legal marriages.[1] Many of them prove as enduring. Similarly, the court cannot deal with adoption which is a significant, if statistically minor method of family formation. Legislation, aided by interpretation by the High Court of Australia has helped to extend these areas in some respects, viz. as regards the position of children of the marriage and of certain third parties.[2] The Family Law Amendment Act 1983 effects some further extensions.[3] The sum total of these developments nevertheless leaves the general position unaltered, i.e. that the Family Court of Australia remains a forum of incomplete jurisdiction.[4]

The importance of the Family Court of Australia, however, is that in those legal areas in which it operates it represents an important innovation in our legal institutions, the full potential of which has yet to be realised. It offers the possibility of the use of new methods of dispute resolution in the sensitive area of conflicts within the family. These developments may come as something of a surprise to the casual observer, since on the surface the Court functions in the manner of other common law courts which are cast in the adversary mould, except for externals such as the doing away with the wearing of wigs and gowns by judges and counsel.[5]

The Court as an Adversary Forum.

The Family Court of Australia is constituted under the Family Law Act 1975[6] as a superior court of record.[7] It is a federal court created by the Commonwealth Parliament under section 71 of the Australian Constitution. As such it exercises a part of the judicial power of the Commonwealth, that is to say, in matters within Commonwealth jurisdiction. First and foremost these include the marriage and matrimonial causes powers,[8] but that is not all. In relation to territories, for examples, the Commonwealth can deal with all other areas of family law, and it has done so. Under section 31 (1) (c) of the Act, as amended by the Family Law Amendment Act 1983 the Court can, in relation to a territory deal with adoption, guardianship, custody or maintenance of children who are not children of a marriage, a matter which in a State remains outside Commonwealth jurisdiction. Other matters in this category are all married women's property questions, even those falling outside the definition of "matrimonial cause" in the Act, and ex-nuptial children's rights. Section 109 of the Family Law Act 1975 provides for the enforcement interstate of affiliation and similar orders by State and Territory courts, the former of which are outside the jurisdiction of the Family Court. The power to enact that section is to be found in the provisions of the Australian Constitution with respect to service and execution of process[9] and the full faith and credit clause.[10] Other powers involved include the external affairs power[11] which enables the Act to give effect to international Conventions to which Australia is a party.[12]

It has been said that a federal court cannot exercise non-judicial functions and that, conversely, judicial functions cannot be exercised by non-judicial tribunals.[13] The subject is highly technical and has been subject to variation and development. It is complicated in that rarely are judicial functions to be found in their "pure" form. Where they are entrusted to a court they usually form a part of a wider admixture of functions. Fact finding, the exercise of discretions, the creation of rights as in arbitration are some such functions. The last named is akin to a legislative function. In the sense that courts can and do make law, it could also be said that they exercise a legislative function, although such an exercise is in a somewhat different category from the exercise of legislative functions by a parliament.[14] The point of historical development in the judicial process is another criterion that has been prayed in aid of a comprehensive definition of judicial power in a way so as to widen the concept by allowing the inclusion of aspects not otherwise qualifying under any of the other conceptual criteria.[15] Thus the development of discretionary rules, while initially akin to a legislative function, will result in their becoming part of the body of substantive law itself, to be applied by the courts in the exercise of their proper judicial functions. There is thus a continuous, if often barely perceptible cross-movement between strictly judicial and discretionary processes. It is this fluidity which contributes to making courts of law apt repositories of discretionary powers.

At this point it may be appropriate to sound a note of caution. A piece of legislation is not always completely consistent, and the more controversial it is, the more numerous the inconsistencies it is apt to contain. This is so by reason of its origin as a political package, bred in political debate and owing its detailed provisions to compromise and "horse trading" between the parties. An outstanding example is the Australian Constitution,[16] the many inconsistencies contained in which have kept a large field of forensic practitioners in bread and butter for eighty years. But the same kind of processes are at work in Australian divorce legislation. The resulting lack of homogeneity in the legislation, considered as a body of social documents may be noted, first in the Matrimonial Causes Act 1959 and now in the Family Law Act 1975. The inconsistencies are the more pronounced as a result of the conscience vote which has traditionally been accorded to their members by the various political parties in this subject matter. The creation of provisions encouraging reconciliation, both by outside counselling agencies and by a staff of court counsellors[17] is a notable example, as reference to the parliamentary debates of the time shows. Cynics have asserted that these provisions were inserted in the Matrimonial Causes Act 1959 by its promoters,[18] in order to ensure the passage of the controversial new divorce ground of separation for five years.[19] This ground was the subject of strong opposition at the time of its introduction.[20] It was the merit of the promoters of the Bill that they were able to induce a climate of sanguine expectations that the Act would result in the creation of a new breed of judges and lawyers who would place the possibility of a reconciliation above all else. It was thought by some, that if necessary, such lawyers would refrain from charging for their services where additional costs were occasioned by procedural delays, such as adjournments intended to lead to a reconciliation.[21] The apparent contradiction involved in providing for reconciliation in an Act whose primary object is to make divorce available is perhaps a modern parallel to the contradiction inherent in Lord Penzance's dictum of "Christian marriage" as "the voluntary union for life of one man and one woman, to the exclusion of all others."[22]

When that pronouncement was made, the English Divorce and Matrimonial Causes Act of 1857 had been on the statute book for nine years.

Similar inconsistencies may be discerned in the Family Law Act 1975, particularly the pious hope expressed in section 43 (a) of having regard to "the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life". The inconsistency is more apparent than real and may have done little more than provide debating points to the anti-divorce lobby. Again, the requirement that the Court, in deciding questions of maintenance and property, shall "protect the position of a woman who wishes only to continue her role as a wife and mother",[23] as it was worded before the 1983 amendments, appeared patently absurd in a situation where the woman in question is already divorced.

These apparent inconsistencies are a reflection of changing social values. On the one hand, there is the centuries old attitude that the family was the foundation stone of society, that marriage must be kept inviolate and indissoluble. The gradual weakening of these beliefs has been traced elsewhere,[24] but the continuing co-existence of those beliefs with divorce has continued and will continue to create ideological dichotomies, the resolution of which is likely to be accompanied by disputation and conflict. Drawing attention to their existence is not therefore to criticise the structure of the Family Law Act.

The Judicial Power of the Commonwealth.

The law has travelled a long way since 1909 when in the early days of the High Court its first Chief Justice delivered himself of the oft-quoted definition of judicial power in section 71 of the Australian Constitution as "the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of the power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action".[25]

The question whether a given court or tribunal is or is not exercising judicial power acquires a special significance in the Australian context, by reason of the doctrine of the separation of powers. As Professor Lane has pointed out, it is not simply a question whether there is an exercise of judicial power *simpliciter*, but whether the judicial power of the Commonwealth is being exercised.[26] The matter is complicated further because rarely, if ever is a "pure" model of a judicial body to be found. Nearly always there is a certain admixture of functions. The basic principles are simple enough. They require, firstly, that only a court can exercise the judicial power of the Commonwealth.[27] The second principle is that a "Chapter 3 Court"[28] cannot exercise non-judicial, i.e. legislative or executive functions, as affirmed by the Privy Council in the *Boilermakers'* case.[29]

The apparent simplicity of these principles is, however, more complicated on closer inspection.[30] An obvious exception to the second principle is the well-known power of courts to make their own rules of courts and issue practice notes. Another is the power to enforce their own orders, e.g. by the use of the contempt power. But these exceptions can be explained by historical considerations, i.e. that courts have always had and exercised such powers, which have thereby become almost an integral part of their judicial functions. They are also very limited in scope and are exercised incidentally to the main business of the courts.

The exercise of judicial discretions is yet another exception. This function verges upon the legislative because of its limited unpredictability of outcome and a certain lack of ascertainable standards for decision. It can lend itself to the carrying out of policy rather than the application of pre-existing criteria.[31] On the other hand, the use of discretions is not uncontrolled. They are governed by legislative guidelines, by the use of evolving precedents[32] and can be corrected on appeal. Discretions have also, in any case, long been an integral part of the way in which courts function, so that to deprive them of the power to exercise them might almost appear to result in a contradiction in terms. Legislatures have always recognised this fact, and legislation is replete with discretionary provisions designed to be used by the courts. The Family Law Act, in particular, and the Australian system of family law are structured and designed so as to call for the exercise of such discretions.[33] The power to exercise a discretion has been described as "an incident to judicial proceedings".[34] Another function entrusted to courts is that of being fact finding tribunals as a preliminary to adjudication. This function is exercised by a jury when the court is constituted by a judge and jury as in the case of indictable offences. In the greater part of civil litigation, and certainly in family law, juries are not involved and the fact finding functions in such a case devolve upon the trial judge.

We thus have a situation where courts exercise fact finding, executive and legislative or normative functions, in apparent contradiction of the judicial process as it would exist in a form of pristine purity. However, these deviations occur for the most part as a preliminary or adjunct to the central part of the function. So long as they do not go beyond that, they are treated as part of the judicial power and have been so interpreted by the High Court. A detailed examination of the judicial power is not the present purpose.[35] That purpose is merely to refer to the limits within which the Family Court of Australia functions, and to examine the possibilities of introducing or extending alternative methods of dispute resolution in a family context, either within the existing limits, or by the creation of other bodies. The Commonwealth does not, after all, have to deal with divorce by judicial resolution. It depends rather on the structure that is adopted. If divorce is structured in the form of a "matrimonial cause" and is preoccupied with the recognition, declaration and enforcement of legal rights and obligations, then all the tests point to an intention on the part of Parliament to deal with it judicially. If, on the other hand, it is treated as primarily an adjustment of behaviour patterns and the structuring of interpersonal relationships, then the use of judicial mechanisms would become not merely unnecessary and otiose, but clearly would fail to qualify as a suitable subject matter for an exercise of the judicial power.

It will be suggested that divorce, as presently treated in our society falls within Professor Zines' third category of functions in relation to judicial power: those that can be given either to courts or administrative bodies.[36]

The Judicial Function in Family Law.

The Family Law Act makes quite extensive use of judicial discretions. "The device of the discretion is used in order to individualise cases, the circumstances of which may be infinitely variable".[37] The device enables the legislature to provide for a range of situations, the details of which are unpredictable. By prescribing guidelines[38] and entrusting the resolution of disputes between parties to a court, the legislature is thus able to have a large volume of matters dealt with in the spirit intended by it and expressed in the guidelines in which those intentions are enshrined. It then becomes the task of the judge to find the facts and to determine on a course which may take into account the wishes of the parties. His decision will sometimes give effect to the will of one of them,[39] or it may represent a combination of the desires of both, in varying proportions.

The judge's order may in fact be identical to the solution which the parties could have arrived at by the use of a willing co-operation and the formulation of a compromise, instead of having it imposed upon them from outside. But the judicial solution must remain within the guidelines and need not necessarily reflect the wishes of either or both, especially where, for example, the "paramount interest" of the child[40] appears to the judge to require such a departure. The legislature, aided by judicial interpretation, has also provided the mechanism for reviewing the exercise of the discretion, if it has miscarried.[41]

The relevance of referring to the judicial power in this context is to suggest that the structure of the administration of Australian family law is at present tied to a basically orthodox judicial model, although it has been subjected to certain modifications. Modern divorce in the common law world is still deeply rooted in traditional legal thinking. The remedy of the dissolution of marriage was conceived as a means for the vindication of a legal claim to relief, springing up in one spouse whose legal rights had been infringed by the other by the commission of a matrimonial offence. Third parties could also be involved as, for example, in the pursuit of an action for "criminal conversation"[42] or a claim for damages for adultery.[43] What is now called "ancillary relief", i.e. a claim for consequential relief in relation to claims arising out of or as a result of the divorce or of the matrimonial transgression giving rise to it, - normally maintenance, custody and property claims, - was also determined largely upon the same principles and originally related to the same question of matrimonial fault.[44] Thus a wife who was in desertion could not claim maintenance at common law, nor could an adulterous wife obtain custody of a child of the marriage or maintenance for herself.[45]

While divorce and its accompanying problems were thus dealt with as purely legal phenomena within the confines of the legal structure, the rigours of these principles underwent gradual but fundamental changes. For example, the question of custody came to be settled under the dominant criterion of the "paramount interest of the child",[46] and maintenance and property orders were to be dealt with on far more equitable principles, the relevance of matrimonial fault gradually receding to vanishing point.[47]

While fault or matrimonial misconduct has thus been virtually eliminated from consideration in the making of judicial determinations in matters of divorce and related matters under the Family Law Act 1975, litigious habits and human nature still continue to conspire to the making of attempts by parties to go on washing each other's dirty linen in public. Aspects of conduct are still of limited relevance, but only in relation to the actual relief which is under consideration.[48] Irrelevant allegations of misconduct are still made by parties to blacken each other's character, but they will normally be ignored or excluded by the court.

The Forensic Process.

The incidence of such allegations does, however, draw attention to a very serious problem inhering in the adversary system of litigation which is the prevailing mode of procedure in the Family Court of Australia, as in courts generally that have been established on the common law model. The adjudicative process is based on the elicitation and evaluation of evidence. The adversary model in its classic form requires that evidence to be adduced viva voce. The procedure has recently been discussed by Lord Devlin.[49] The rationale underlying it was pleaded with customary eloquence by Lord Denning.[50] The essence of the judge's role, as seen by Lord Denning, is to "hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens ... in some foreign countries".[51] His part is "to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure, to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well".[52]

Nevertheless, as Lord Denning sees it, the judge is "not a mere umpire", but his predominant objective is to find out the truth. Central to the achievement of that objective is the process of cross-examination. "It is only by cross-examination that a witness' evidence can be properly tested..."[53] As result of this attitude, laywers in the common law systems have generally believed that their method of finding out the truth is superior to any other. This belief is not universally held and some doubts have come to be expressed, for example by Lord Devlin himself as to the judge's ability to evaluate the evidence of a witness from that witness' demeanour in the witness box.[54]

The adversary trial procedure is subject to other objections. It is, for example, open to abuse, such as by the introduction of surprise witnesses for whose evidence the other side are unable to prepare, as in a criminal trial. Whereas the prosecution has to let the defence have this information in advance and, on pain of disallowance, to supply written proofs of the evidence that is to be led from each witness, the defence is under no corresponding duty. Whilst this may be in keeping with the philosophy of placing the liberty of the subject and the presumed innocence of the accused on a pedestal, the interest of society in the suppression of crime is given a poor second place.

However, the concern of this paper is less with the mechanism of the forensic process than with the effect of that process on the parties and others concerned in a family law contest. That effect can at times be nothing short of devastating. Because of the adversary framework the parties are primed like fighting cocks or gladiators. They tell a story that is edited to produce just one result: to win the case.[55] The ultimate objective is to be believed to the exclusion of any alternative version. Evidence which supports the claim is emphasised, but facts which are inconvenient or damaging are, so far as is ethically possible, minimised or kept out altogether. The result is often an exaggerated picture that tends to exacerbate rather than assuage any hostility between the parties. The parties leave the court room more embittered than when they entered it.

The inquisitorial procedure which is followed in the civil law countries is much less affected by the same vice. Certainly the parties are not likely to become as polarised by the proceedings in open court. Any accusations and attacks will have been committed to paper and many of them may remain buried in the archives of the court.

By the time of the hearing, some of them may have been forgotten or resolved. More important, the parties have been spared the acerbity of cross-examination in a court that is open to the public, with the fuelling of tempers that goes with such a procedure.[56]

Even the inquisitorial process, however, is still based on the contest between two opposing parties, and any existing hostility between them may not disperse until after the conclusion of the legal proceedings. In any event, inquisitorial no less than adversarial proceedings are used to resolve controversies between opposing parties. The difference between inquisitorial and adversarial proceedings is one of form and degree rather than of substance. They are but different methods of achieving the same object by legal means. Common to both is the action of a judge whose adjudication, like the descent of a *deus ex machina* represents the ultimate intervention in the affairs of the parties. The solution is thus presented to the parties from outside or above, and it is *imposed* upon them both in the full sense of that term, with all the majesty of the law and backed by the Court's and the State's powers of enforcement. It is true that there may come a stage in any dispute when no other method any longer offers a chance of success. With some litigants no other way of ending the dispute is ever possible. The unfortunate result is that it has come to be accepted as the standard available procedure in family law.

The Purpose of Family Law.

Yet, now that the delictual substructure has been stripped away from this branch of the law, the need for curial adjudication has largely gone with it. This is certainly so in the matter of principal relief, i.e. the dissolution of marriage itself. Divorce is no longer a legal remedy for the vindication of legal rights that have been infringed. Instead, it has become a means for the restructuring of human lives, to take account of behaviour patterns which have changed. A marriage may now be dissolved only on the ground that it has broken down irretrievably.[57] The question of whether a marriage has broken down irretrievably is, however, a non-justiciable issue,[58] subject to the following considerations.

Irretrievable breakdown of marriage may be established to the satisfaction of a court of law in one of two ways. One way is for the court to embark upon a fact finding mission. Courts do this by sifting evidence, hearing witnesses and arriving at a judgment as to whether the facts alleged are true or false. This would have been the solution advocated by the Archbishop of Canterbury's Committee in its report Putting Asunder[59] in relation to marriage breakdown. But because of the non-justiciability of the central issue, this solution was condemned by the Law Commission.[60] It would, at the least, have involved the detailed evaluation of a great deal of evidence, both documentary and viva voce, including the evidence of experts in human relationships and the behavioural sciences. This would have made immense demands on the resources of the courts, and caused enormous expense to the community and to the parties themselves.

The Law Commission proposed a simple alternative, which is the other method of establishing breakdown, and which has the advantage of rendering it justiciable. This consists in promulgating a simple test, based on easily demonstrable facts from which, as a matter of logic, experience and almost inevitability breakdown can be inferred. Such a criterion is the actual separation of the parties for a minimum period.[61] The extra-legal phenomenon of marriage breakdown is thus translated into a simple fact situation cognisable by lawyers. The elucidation of facts is a familiar activity for courts of law and the necessary criterion has thus moved on to a plane where courts can deal with it.

An intermediate alternative would be to have the question of breakdown investigated by an expert in the field, such as a psychologist whose report to the court could be treated as _prima facie_ evidence of breakdown. A suggestion to that effect was in fact put forward by the present writer at a Seminar of the Sydney University Law Graduates' Association some years ago.[62] This scheme envisaged the appointment of counsellors experienced in human relationships,[63] whose skills would be used diagnostically[64] to ascertain in any application for divorce whether a marriage had in fact reached the point of no return.

The proposal was not favourably received. Indeed it drew the scornful riposte of Mr. Ray Watson, Q.C.[65] that "the Australian public would never submit to this kind of manipulation". In retrospect, that assessment seems justified, not so much on the ground that the proposal would have been unduly manipulative, but rather because it would have been unworkable. To begin with, like the proposal in _Putting Asunder_ it would have required a large army of counsellors and been enormously expensive. It would also, one suspects, in an overwhelming proportion of cases have resulted in so inevitable and predictable a verdict that the counsellor's fiat would have become an almost automatic, but nevertheless expensive rubber-stamp.[66] In the presumably small number of cases where the conclusion was against a finding of breakdown there would often have been lengthy and even more expensive court proceedings to contradict the report and try to convince the court to the opposite effect.

There is, however, no real need for the continued involvement of courts and legal processes in the establishment of irretrievable breakdown. The present legal procedure leading to the pronouncement of a degree is perfunctory in the extreme and sometimes verges on the farcical. Enough has been said to suggest that the continued administration of principal relief, i.e. the granting of a decree nisi itself - as distinct from ancillary relief - by a court of law is an historical development which has little or no justification today. The ascertainment of the fact of twelve months separation is a task which administrative tribunals can and do perform. The fact finding function, as has been pointed out above, in any case is not central to the judicial process, but is undertaken by courts as a preliminary or incidental to their proper adjudicative functions.

The treatment of ancillary relief is a more complex matter. As has been said, these matters are dealt with largely by the use of judicial discretions, based on the facts of each case and the guidelines spelt out by the law. But again, the discretion does not have to be a judicial one. Fact finding and discretionary decisions can be, as they have been entrusted to administrative tribunals or authorities, such as the Commissioner of Taxation. If he makes a mistake, he can be corrected, but even that task can in most instances be handled by an administrative tribunal, such as a Board of Review or the Administrative Appeals Tribunal. There are few, if any matters in the field of divorce and its ancillaries, as they are presently structured under the Family Law Act that are incapable of being so dealt with. If the enquiry that is being undertaken by Professor A.D. Hambly of the Australian Law Reform Commission in accordance with the recommendations of the Joint Select Committee into the Family Law Act [67] were to formulate a matrimonial property regime based upon more rigid rather than discretionary principles and upon legal rights and obligations acquired or incurred by spouses upon marriage in each other's property, we might see a fresh impetus being given to the development of legal principles. The establishment of fixed legal relationships consequent upon the act of marriage would make resolution by courts of law indispensable. In any case, the courts will need to retain a supervisory and appellate function, including the correction of a discretion that has miscarried.

Enough has been said to show that divorce has rarely moved off the legal plane. Divorce now has become openly what to an extent it had been covertly, it has become consensual. In days of matrimonial fault, and when it was thought that it was in the interest of the preservation of marriage as a basic social institution to keep it indissoluble or near indissoluble, divorce by mutual consent was regarded as a corrupt bargain. As recently as under the *Matrimonial Causes Act* 1959, collusion, like condonation remained as an absolute bar.[68] Parties who were guilty of it had to remain married to each other, in a way that was reminiscent of the old doctrine of *compensatio criminis* or recrimination. That doctrine required the refusal of a decree of divorce to parties who were both guilty of adultery, leaving them to remain to "live together and find sources of mutual forgiveness in the humiliation of mutal guilt".[69]

Divorce by Consent.

Today, by contrast, there is no longer any principle of public policy which requires the rejection of divorce by mutual consent. Under the Family Law Act consent does not, as such, play any part in relation to divorce, a decree nisi being available to either party on proof of twelve months separation, irrespective of whether there is agreement between the parties or not. It may, however, be assumed that a large proportion of all divorces is in fact consensual. The present English law of divorce provides for divorce by consent, coupled with separation for two years.[70] Actual consent may or may not be inferred from the fact that a spouse's application for divorce under the Australian Act is not resisted by the other, since failure to oppose may be equally due to a recognition that under the law, such opposition could not normally be successful where the parties have lived apart for twelve months or more. Under the amendments made to the Family Law Act by the Family Law Amendment Act 1983[71] there is now provision for joint applications by both parties for dissolution of marriage. This requires an open demonstration of unanimity and is a clear example of divorce by consent.

Another extension of the consensual element is the new procedure which will dispense with the appearance of both parties at the hearing of certain applications for a decree nisi, misleadingly and derogatorily called "divorce by post" in the parliamentary debates on the Family Law Amendment Act 1983. The amending Act inserts a new section in[72] the principal Act. That section provides for the hearing of proceedings for dissolution of marriage initiated by one of the parties and not opposed by the other, upon the request of the applicant, to be dealt with by the court in the absence of both parties and their legal representatives, unless the respondent requests to the contrary. An additional requirement that this procedure can operate only where there is no child under the age of eighteen was inserted during the debates, because of pressure from some senators who would have liked the entire clause to be abandoned. Indeed one of them would have amended the Act so as to require that in all cases of dissolution, both parties be present in court unless the court grants a special dispensation from this requiement.

It is difficult to see that these proposals would have served any useful purpose or helped prevent the breakdown of marriages or promoted renewed attempts by parties whose marriage had broken down to resume a meaningful relationship. More likely they would have been felt by most parties as irksome and unnecessarily restrictive. They would have added to the costs and delays of divorce. Worst of all, they would have postponed the possibility of the clean break which is encouraged under the Act,[73] and the restructuring of relationships which is one of its objects. Instead, it would have extended and intensified the period during which the parties must remain in limbo, neither married nor divorced, in which state unhappiness and resentment are likely to build up. If the aim is to minimise hostility and to encourage smoother relations between the parties in separation and divorce, these proposals would have run directly counter to those evolutionary trends. It is questionable whether as a demonstration of the value which our society places upon the institution of marriage they would have achieved any positive results.

The foregoing observations lead to two conclusions, one of them reinforcing the other. One relates to the form of divorce proceedings. Divorce is now either consensual or unopposed, and is not effectively capable of being opposed in court. There are two exceptions to that fact, but both lie within a very limited compass. One arises by disputing and being able to disprove the allegation of twelve months' separation altogether.[74] The other is to establish that there is a reasonable likelihood of cohabitation being resumed.[75] The first, if successful, can only postpone the granting of a decree until the twelve months' period has expired. The second is very unlikely to be successful because it is almost impossible to establish. When divorce is seen in this light, it no longer answers to the definition of what is involved in a matrimonial cause or in a judicial proceeding.[76] It remains within these categories in practice only, it is suggested, because historically it has always been so dealt with, because fact finding has always been entrusted to the courts, and because many of the associated matters are dealt with by judicial discretion. None of these reasons requires disposition by a court of law. Indeed, the indications are in the opposite direction.

The other conclusion is concerned with the undesirable effects of the adversary process upon the relations between the parties that have been already referred to. Everything points to the desirability of finding some other mode of procedure in the resolution of family disputes. The granting of a decree nisi is today the least part of the entire group of issues to be resolved. It could be dealt with by a simple administrative act. The parties could submit a joint request to an administrative officer who, upon being satisfied that the papers were in order, would be empowered to make an order of dissolution. Similarly, an order could be made upon the request of one of the parties to which the other offered no opposition.

This would in effect be transferring the new procedure[77] on to an administrative plane to which it more properly belongs. The exception from the new procedure[78] of cases involving children under eighteen years is illogical, since the procedure does not in any case extend to custody and access dispositions involving such children. It can be only for the purpose of the declaration required in such cases[79] as to the well-being of the children of the marriage that the court has a function to perform, but in most cases this would be possible on the documents. A small residue of cases would remain to be dealt with by the judicial process where the application was opposed or its availability disputed. These cases would raise genuine legal controversies, the resolution of which properly comes within the judicial function. Another and similar, but also numerically small category would be those cases where one of the parties opposed the resolution of issues being made otherwise than by a court of law. While this would not, of itself, constitute it a judicial matter stricto sensu, it would seem appropriate, on policy grounds, to leave such cases in the hands of judges.

This leaves the large area[80] of ancillary relief to be dealt with. This relief largely, though not entirely, involves the use of discretions. Custody in particular is based on considerations transcending justice between the parties. There are no longer any "parental rights" in the strict sense in disputes inter partes. The presumption[81] that "each of the parties... is a guardian of any child of the marriage who has not attained the age of 18 years and those parties have the joint custody of the child" applies _prima facie_, it is submitted, in ongoing marriages and operates principally in relation to third parties. It is, in any case, "subject to any order of a court for the time being in force". Normally, such an order may be made upon the separation of the parties, and upon the application of one or both. Nevertheless, the courts have always been regarded as the representative of the State in its concern for young persons,[82] and it seems appropriate that in contested custody matters the questions should be resolved by a court.

Maintenance is more typically discretionary than custody. Extensive guidelines have been written into the Act.[83] As regards the alteration of property interests between the parties, some of the guidelines also apply.[84] But other questions are also involved. These are set out in section 79 and involve determinations of fact, such as the respective contributions made by the parties, whether monetary or otherwise. There is an overriding requirement that considerations of justice and equity be observed.[85] Declarations and injunctions are other forms of relief that are to be discretionary, except for declarations of property interests,[86] where existing rights and title to property have to be gone into along legal principles. One thing, however, is common to all forms of ancillary relief, with the exception to some extent of orders relating to children. If the parties can come to an agreement or compromise before the court has to decide the matter, the court processes can be very largely circumvented.

Non-judicial Procedures in Family Law.

Enough has been said to point to three related developments. The first is that adversary proceedings in family law are no longer required or indeed appropriate, with certain limited exceptions. The second is that the structure of Australian family law already includes procedures that facilitate the resolution of family disputes without the need for judicial intervention or involvement. The third is the potential which thereby exists for developing these extra-judicial methods to an even greater extent than has hitherto been the case.

The first of these developments has already been discussed. The second, which relates to alternative methods of dispute resolution has in practice divided into two broad streams, although the provisions of the law do not in so many words require such a division. One of these relates to the resolution of disputes as to property and maintenance. This has been dealt with or assisted by registrars of the Court.[87]

The function of registrar has also been further extended by the 1983 amendments. Under a new section 37A, registrars are able to deal with many matters of a procedural, interlocutory or practice nature. These include such matters as substituted service and other questions as to service of process, discovery and the inspection and production of documents, certain interim and consent orders, adjournments and enforcement orders. Giving registrars these new functions represents a significant widening of their powers and will help streamline the organisation of the Family Court. Many of the matters which have been dealt with by judges on a "pre-trial" or "first return" basis are of a preliminary nature and do not require the same application of judicial principles or exercise of discretion as the hearing and disposition of substantial proceedings. Registrars are thus invested with a part of the judicial power.

The Commonwealth has hitherto been reluctant to invest any part of its judicial power in officers of its courts, as distinct from its judges, even though such powers in interlocutory or preliminary matters have traditionally been exercised by officers of courts at state level, such as prothonotaries and registrars.[88] The prevailing doctrine, as it came to be settled in Kotsis v. Kotsis[89] and Knight v. Knight[90] was that the Commonwealth could not vest a part of the judicial power under section 77 (iii) of the Australian Constitution in officials of State courts, even though in their non-federal jurisdiction these courts could and did function by means of such officers. The doctrine was reconsidered in 1982 in Commonwealth v. H.C.F.[92] and overruled in that case by a majority of six to one. While this decision deals only with the exercise of Commonwealth judicial power invested in State courts, the judgments, particularly those of Gibbs C.J., Mason and Murphy J.J. show that there is no conceptual reason why federal courts should not be able to function in a similar way. Thus a registrar, "although not a member of the court" may be looked upon as "part of the organisation through which the powers of the court were exercised".[93] The result of thus restructuring the court, it is suggested, so far as the Family Court of Australia is concerned, can only be the enhancement of the prestige of the court, as well as making it function more efficiently and more expeditiously.

The other stream relates to disputes concerning the custody, guardianship, access and welfare of children. In these disputes, court counsellors and welfare officers have taken a leading role. Registrars are legally qualified and thus able to assist in matters involving reference to legal principles and practices, including the decisions of the court. Court counsellors are qualified in the behavioural sciences and these qualifications enable them to assist both the parties and the court in arriving at agreements or finding solutions which are in accordance with the "paramount interest of the child". In this, they are in fact better qualified than judges who are lawyers, but most of whom have no formal training in psychology, however much experience they may have acquired empirically as persons who "by reason of training, experience and personality (are) suitable person(s) to deal with matters of family law".[94]

These procedures have been developed and are being applied in the Family Court of Australia. In property and maintenance matters, regulation 96 provides for conferences between the parties being held, with or without their legal advisers. Such conferences can be ordered by the court or by a registrar, and they have been increasingly so ordered by the court. They may be, and typically are held in the presence of a registrar or deputy registrar. The proceedings are privileged and may not be used or reported in court. Where an agreement is reached, this may be committed to writing and submitted to the court for approval under section 87 of the Act. The Court has a real discretion whether or not to approve it, on the ground that its provisions are "proper".[95] The agreement, once approved, becomes the equivalent of a court order the place of which it then takes, and it pre-empts the right of the parties to apply for further dispositive orders to the court on matters covered by it, unless they can have it set aside. The agreement is intended to be final, and until the 1983 amendments, could be set aside in only very limited circumstances, namely either upon proof of injustice owing to fraud in its making, or upon the mutual agreement of the parties.[96] Under the amendments, these powers of revocation have been widened somewhat so as also to include cases where the agreement turns out to be void, voidable or unenforceable,[97] or where new circumstances have supervened since the original approval which render the continued enforcement of the agreement impracticable.[98] Similarly, where the arrangements respecting a child under eighteen made by the agreement are no longer proper, the court may also go outside the provisions of the agreement in those respects.[99]

What has been said of an agreement approved under section 87 of the Act also applies to agreements registered, as distinct from approved by the court pursuant to section 86. While such an agreement does not exclude the powers of the court under the Act, it is another example of recognition and encouragement being given by the Act to the settlement by the parties of their differences in matters of property and maintenance.

In a parallel fashion, in matters concerning children, the counselling staff of the court are available to help the parties solve their problems co-operatively.[100] Again, the provisions for conferences between the parties with the aid of a court counsellor or welfare officers, which are aimed at resolving differences between them have been strengthened by the amendments. Thus the transactions involved in such conferences are no longer reportable or receivable in evidence in subsequent proceedings, but instead, the court can ask specifically for a report from a counsellor which can be so used.[101]

The most important innovations, however, as to both registrars' and counselling conferences are the new provisions requiring the parties to attend a conference before the court is empowered to make an order in relation to a child[102] or to property.[103] There are some exceptions to this principle, firstly as to interim or consent orders and secondly, if there are good reasons such as urgency or considerations of practicality which go against the requirement. The requirement of attending a conference is not entirely new. For some time it has been required as a matter of practice.[104] Now, however, it has become a part of the law. It is a further significant step away from adversary procedures in Australian family law. The trend away from adversary procedures has been recognised for some time. A former Attorney-General Mr. R.J. Ellicott Q.C. repeatedly went on record saying that "counselling may ultimately become the main function of the Family Court in this country and the role of the judges might be diminished".[105]

In the United States, considerable developments have taken place in the direction of conciliation and mediation,[106] largely outside the court system by private mediators and conciliators.[107] By enacting the new provisions that make attempts at conciliation mandatory, such a conciliatory and extra-judicial procedure has been institutionalised and made an integral part of the structure of Australian family law. It sets up a halfway house, or perhaps it goes even more than halfway in departing from the settlement of family disputes by strictly judicial procedures. As has been indicated, there are important elements in family disputes, particularly in relation to some property disputes,[108] which may continue to require legal and judicial intervention if the parties are unable to reach agreement. The paramount interest principle in relation to children will properly continue to involve the courts in a supervisory role, to ensure that the principle, so far as possible, is observed. But the modifications to the legal framework now go a long way to taking Australian family law out of the adversary setting of judicial institutions, except in a formal sense. Once this is realised by the public, the benefits to litigants and to the community will be considerable. The emphasis in family law will be more on family and less on law. The heavy hand of the past is finally being lifted.

Footnotes.

1. Cf. the Report of the N.S.W. Law Reform Commission into *De Facto* Marriages, 1983.

2. Cf. *Dowal v. Murray* (1978) 143 C.L.R. 410, *Vitzdamm-Jones v. Vitzdamm-Jones* (1981) 33 A.L.R. 537. *Fountain v. Alexander* (1982) 40 A.L.R. 441, H.A. Finlay: "A Commonwealth 'Family Law'?" (1982) 56 A.L.J. 119, H.A. Finlay: *Family Law in Australia*, 3rd ed., Chap. 2.

3. E.g. amendments to s. 4, definition of "matrimonial cause" (ca) as to matrimonial property, and as to proceedings with respect to the welfare of a child of the marriage, (cf), (cg) and (ch) and to s. 5 definition of "child of a marriage".

4. These limitations, incidentally, do not apply in Western Australia, where the State has set up a Family Court of its own, in accordance with s. 41 of the *Family Law Act* 1975, under the provisions of the *Family Court Act* 1976-1982 (W.A.). That Court administers the *Family Law Act* of the Commonwealth in Western Australia and in addition, married women's property proceedings in so far as these are outside the jurisdiction of the Commonwealth, child welfare and custody and maintenance in relation to ex-nuptial children. But the price of jurisdictional homogeneity is a continuing lack of uniformity in state matters of family law, e.g. adoption legislation which has never achievedcomplete uniformity, c.f. A.D. Hambly: "Adoption of Children: An Appraisal of the Uniform Acts" (1967-1968) 8 U.W.A.L. Rev. 281.

5. *Family Law Act* 1975. s. 97(4).

6. S. 21(1).

7. S. 21(2).

8. Australian Constitution, s. 51 (xxi) and (xxii) respectively.

9. S. 51 (xxiv).

10. S. 51(xxv).

11. S. 51(xxiv).

12. Sections 111, 111A, 111B.

13. *R. v. Davison* (1954) 90 C.L.R. 353, W.A. Wynes: *Legislative, Executive and Judicial Powers in Australia*, 5th ed., p.423, L. Zines: *The High Court and the Constitution*, p. 146.

14. See per Kitto J. in *R. v. Davison*, *supra*, and the analysis of Zines, *op.cit.*, at pp. 167-168.

15. E. g. *Cominos v. Cominos* (1972) 127 C.L.R. 588.

16. Cf. La Nauze: *The Making of the Australian Constitution*, 1972, M.U.P., Quick and Garran: *The Annotated Constitution of the Australian Commonwealth*, 1901, Angus and Robertson.

17. Sections 11 to 19.

18. Notably Sir Garfield Barwick, when Attorney-General.

19. *Matrimonial Causes Act* 1959, s. 28(m).

20. See the passionate outburst of Mr. A.A. Calwell, M.H.R., who characterised the clause as "giving some sort of smelly secular sanctification to barnyard morality", Hansard, 12 Nov. 1959, H.Reps.).

21. Cf. the speeches of Mr. Duthie, M.H.R., Hansard, H. Rep. Vol. 25, p. 2739, Mr. Lang, M.H.R. *op.cit.*, Vol. 23, p. 2227. That such procedures could lead to additional costs was recognised by the Attorney-General, *op.cit.*, Vol. 23, p. 2227.

22. *Hyde v. Hyde and Woodmansee* (1866) 1 L.R. 1 P.D. 130 at 133.

23. S. 75(2)(1). The clause was reworded by the 1983 amendments and now reads: "the need to protect a party who wishes to continue that party's role as a parent".

24. H.A. Finlay: "Fault, Causation and Breakdown in the Anglo-Australian Law of Divorce" (1978) 94 L.Q.R. 120.

25. *Huddart Parker & Co. Pty.Ltd. v. Moorehead* (1909) 8 C.L.R. 330, at p. 357.

26. P.H. Lane: *A Students' Manual of Australian Constitutional Law*, 1980, p. 273.

27. *R. v. Davison*, *supra*, n. 13, *R. v. Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty.Ltd.*, (1970) 123 C.L.R. 361.

28. I.e. as dealt with in Chap. 3 of the Constitution, ss. 71-80.

29. *R. v. Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 C.L.R. 254.

30. The simplicity of the principle has given way, time and again, to practical expediency and critics have not been lacking, from Sir Owen Dixon ("The Law and the Constitution" (1935) 51 L.Q.R. 590 at p. 606) to Sir Garfield Barwick (cf. *R. v. Joske; Ex parte Australian Building Construction Employees* etc. (1974) 130 C.L.R. 87). Cf. also Sir Richard Eggleston: "a satisfactory definition of what is judicial power has so far eluded the most ingenious judge", cited by J. McMillan, G. Evans, H. Storey: *Australia's Constitution: Time for Change?* 1983, p.295.

31. See e.g. *R. v. Spicer; Ex parte Australian Builders' Labourers' Federation* (1975) 100 C.L.R. 277.

32. *R. v. Joske; Ex parte Shop Distributive and Allied Employees' Association* (1976) 135 C.L.R. 194.

33. See *Cominos v. Cominos*, *supra*, n. 15, e.g. at p. 591, cf. H.A. Finlay: "Judicial Discretion in Family and other Litigation" (1976) 2 Mon. Law Rev. 221.

34. *Lansell v. Lansell* (1964) 110 C.L.R. 353.

35. For a comprehensive discussion see Wynes, op.cit., n.13. Zines, op.cit. n.13, Lane, op.cit. n.26, C. Howard: Australian Federal Constitutional Law, 2nd. ed., 1972, H.A. Finlay: "Commonwealth Family Courts: Some Legal and Constitutional Implications" (1971) 2 Fed. Law Rev. 287.

36. Finlay, loc. cit., n. 2, at p. 237.

37. H.A. Finlay, 2 Mon. Law Rev. at p. 237.

38. See e.g. Family Law Act 1975, ss. 64, 75, 79.

39. The "winner".

40. As required by s. 64(1)(a) of the Act.

41. Section 29 of the Act, and see Evans v. Bartlam [1937] A.C. 473, Osenton v. Johnston [1942] A.C. 130, House v. R. (1936) 55 C.L.R. 499.

42. Before 1857.

43. After that date.

44. See e.g. Trestain v. Trestain [1950] P.198.

45. Cf. H.A. Finlay and A. Bissett-Johnson: Family Law in Australia, 1972, pp. 457-458, 532-536, Seddon v. Seddon & Doyle (1862) 2 Sw. & Tr. 640.

46. Guardianship of Infants Act 1925 (Eng.) s.1. The original formula employed in that Act was actually "first and paramount" - a formulation later to be discarded in favour of the present "paramount". The change in wording was at first thought to have material consequences of interpretation, but is not now thought to be of any significance, cf. H.A. Finlay: "'First' or 'Paramount' - The Interest of the Child in Matrimonial Proceedings" (1968) 42 A.L.J. 96.

47. See H.A. Finlay: "Reluctant but Inevitable: The Retreat of Matrimonial Fault (1975) 38 M.L.R. 153.

48. In relation to custody as shedding light on a party's suitability as a custodial parent, e.g. in In the Marriage of Lonard (1976) 11 A.L.R. 618, H. v. H. & C. [1969] 1 All E.R. 262. In an application for an injunction protecting a party against apprehended violence from the other party, that other party's past conduct is obviously relevant to the likelihood or otherwise of a repetition, - cf. Family Law Act 1975, s. 114AA.

49. The Judge, 1979, O.U.P., Oxford, at pp. 55-57, 60-63. See also W. Zeidler: "Evaluation of the Adversary System: As Comparison, Some Remarks on the Investigatory System of Procedure" (1981) 55 A.L.J. 390, R. Eggleston: "What is Wrong with the Adversary System?" (1975) 49 A.L.J. 428, H.A. Finlay: "Towards Non-Adversary Procedures in Family Law" (1983) 10 Syd. Law Rev., 61.

50. As he then was, in *Jones v. National Coal Board* [1957] 2 K.B. 55.

51. *Ibid*, p. 63.

52. *Ibid*, p. 64.

53. *Ibid*, p. 65.

54. Devlin, *op.cit.*, at p. 63, and see Mr. Justice McKenna, cited *ibid*.

55. See e.g. Commonwealth Parliamentary Debates, 1959, Senate, Vol. 16, p. 1800 (per Senator Anderson): "The atmosphere of the court tends to drive the marriage partners into their separate litigant corners and the contending lawyers are set the task of painting with heavy brushes the alleged character defects and misdemeanours of the parties.... Once the parties get into the court arena, with lawyers operating on either side there is a duty upon each lawyer to do his best for his client". Cf. H.A. Finlay: "The Broken Marriage and the Courts" (1970) 7 Qld. Law Jl. 23.

56. For a brief account of the inquisitorial trial procedure, see Devlin, *op.cit.*, n. 49, Lecture 3, Zeidler, *loc. cit.* n. 49.

57. *Family Law Act* 1975, s.48.

58. Law Commission, *The Ground of Divorce: The Field of Choice*, 1966, Cmnd. 3123, para 58(1), 60-63, *Pheasant v. Pheasant* [1972] Fam. 202, H.A. Finlay: "Justiciable Issues and Legalism in the Law of Divorce" (1972) 46 A.L.J. 543, "Reluctant but Inevitable" etc., *supra*, n. 47, "Fault, Causation and Breakdown" etc. *supra*, n.24.

59. 1966, S.P.C.K., London.

60. *Op. cit.* n. 58.

61. Six months was suggested by the Law Commission, *op.cit.*, para. 76. Twelve months has been adopted in the *Family Law Act*, s. 48. A proposal by Senator Durack Q.C. in the Senate during the debates into the *Family Law Amendment Act* 1983 to substitute a two-year period of separation was defeated.

62. 1969, unpublished.

63. This was before the enactment of the *Family Law Act* 1975, and the creation of a court counselling service.

64. As distinct from their usual remedial functions.

65. As he then was, now a Senior Judge of the Family Court of Australia.

66. A recent parallel would have been Senator Harradine's proposal in the 1983 Debates, requiring counselling in all cases, before the Court could have heard the application for divorce. The amendment was defeated.

67. *Family Law in Australia*, Report of the Joint Select Committee into the Family Law Act, 1980, A.G.P.S. Canberra, Vol. 1, recommendation 36, para. 5.155, p. 107.

68. *Matrimonial Causes Act* 1959, ss. 40, 39; cf. H.A. Finlay: "The Test of Condonation" (1971) 2 A.C.L.R. 138.

69. *Beeby v. Beeby* (1799) 1 Hag. Ecc. 789, at p. 790 per Lord Stowell, H.A. Finlay: "Discretion Statements: An Old fashioned Melodrama" (1970) 1 A.C.L.R. 35.

70. *Matrimonial Causes Act* 1973 (Eng.), s. 1 (2) (d).

71. New s. 44 (1A).

72. Section 98A.

73. Cf. ss. 81, 44(3) and (4).

74. Required by s. 48(2).

75. As envisaged by s. 48(3).

76. *Supra*, n. 35.

77. Under s. 98A of the Act.

78. Under s. 98A (1)(b).

79. By section 63 of the Act.

80. In terms of the volume of the work of the Family Court of Australia.

81. In section 61(1) of the Act.

82. Cf. the Ward of Court jurisdiction of the English Court of Chancery as *parens patriae*.

83. S. 75 as to spouses, s. 76 as to children.

84. S. 75.

85. S. 79(2).

86. Under s. 78.

87. The designation "registrar", as used in the *Family Law Act*, includes "deputy-registrars, - see s. 4: definition of "registrar" as including any other "appropriate officer of the court".

88. *Commonwealth of Australia v. Hospital Contribution Fund of Australia* (1982) 40 A.L.R. 673, per Murphy J. at p. 686.

89. (1970) 122 C.L.R. 69.

90. (1971) 122 C.L.R. 114.

91. Cf. (1971) 45 A.L.J. 145.

92. *Supra*, n. 88.

93. *Ibid*., per Gibbs C.J. at p.680.

94. *Family Law Act* 1975, s. 22(2)(b).

95. S. 87(3), previously 87(4). The section says: "the court shall ;.. approve the agreement", but in making this prescription operative upon the court's evaluation as to the agreement's propriety, an exercise of the discretion in making that evaluation is itself involved - see Finlay, *supra*, n. 33.

96. S.87(6) before the enactment of the *Family Law Amendment Act* 1983.

97. New s. 87(8)(c).

98. New s. 87(8)(d).

99. New s. 87(13) and (14).

100. S. 62.

101. Ss. 62 as amended, 62A.

102. S. 64(1B).

103. S. 79(9).

104. See practice direction issued by the Chief Judge of the Family Court of Australia: "In general, unless urgent action is required, the Court will expect parties in dispute about custody or access to attend conciliation counselling before proceeding to hear the matter or to make any interim or final order", *Australian Family Law & Practice*, CCH, Vol 2, 54-817.

105. Address at the opening of the Family Court premises in Melbourne, 17 May 1977; cf. address to the Australian Commonwealth Council of the Mothers' Union at Adelaide, 6 June 1977, also Seminar on "Women - Today and Tomorrow", 13 August 1977.

106. A distinction must be maintained between *conciliation* and *mediation*, - see F.M. Horwill: "Thoughts Towards a Model for Conciliation and Conflict Resolution in the Family Court of Australia", (1983) Vol. 18, Aust. Psychologist 39.

107. Cf. Patricia L. Winks: "Divorce Mediation: A Nonadversary Procedure for the No Fault Divorce" (1980-81) 19 J. of Family Law 615 (1982), R. Crouch: "Divorce Mediation and Legal Ethics (1982) 16 FLQ 219.

108. Involving possibly matters of company law and family trusts.

Descriptive analysis, process and outcome of a caseload of one hundred migrant cases seen in counselling

Emilia Renouf
Family Court of Australia

INTRODUCTION

The legal status accorded to the term migrant (short form of immigrant) refers to residents who belong to a category of persons whom the State can control directly or provide for in some specific way.

Australian migrants come from all ethnic backgrounds but the term "ethnic" is generally applied only to the non-English speaking migrants. This study is concerned only with this group. The terms "migrant" and "ethnic" are not really interchangeable: "ethnic" focuses more on cultural values while "migrant" focuses more on legal status. Given the context in which the study was conducted, the term "migrant" has been preferred.

The migrant presence in Australia has been interpreted differently over time. The process has been one of increased differentiation so that in the 1980's migrants are described as members of a pluralistic or multicultural society." (Martin, 1978) The structure and activities set up to cope with the migrant presence have equally been subject to increased differentiation with the passing of each decade, i.e.

a) established institutions have developed special

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services and substructures for NES clients,

b) ethnic groups have become organization units in their own right and told the community what their needs were and

c) new structures have been specifically developed to serve migrants.

The Family Court was set up to be a helping court in matters concerning marriage and family breakdown. In its most recent (February 1983) policy statement with regard to minority ethnic groups as clients, the Chief Judge of the Family Court gives as its aims:

a) to adapt general services to their needs by way of distributing information in their language

b) to raise the level of multicultural awareness among court professionals,

c) to ensure adequate communication between clients and counsellors and other staff through use of interpreters, as well as,

d) to take into account and discuss with clients, where appropriate, differences in law and norms from the majority to the minority culture.

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The policy statement clearly expounds the principle that no resident of Australia should be disadvantaged in the use of the provisions of the Family Law Act and the facilities of the Family Court by reason of their ethnic or cultural backgrounds or language.

What has received scant attention is the professional disadvantage in which judges, registrars and counsellors may find themselves in performing their duties and delivering their service to ethnic clients. Their professional training and concepts (whether they be in law, social work or psychology) may be inconsistent with multiculturalism or its values (because of their ethnocentrism). As K. Laster (1982) has put it: "Family Court professionals must not fall into the trap of applying cultural stereotypes to the complex issues before them, not let their overscrupulous concern with legal, social and cultural pluralism lead them to a denial of justice in the determination or conciliation of the individual dispute."

As regards the Counselling Service, Bradshaw (1976, has described four types of needs that can be identified at a general level in counselling: normative, comparative, expressed and felt. The Australian legal system clearly stipulates what are Australian normative needs; comparative needs can be taken care of by solicitors explaining the differences in law and norms to minority culture clients. What is there to take care of the expressed or, even harder to get at, client felt needs?

The specialised nature of the counsellors' work, i.e. help parents conciliate and self-determine best arrangements for welfare of their children after separation, and the setting, i.e. a court-connected service housed in the same building as the courts, already make it hard for counsellors to deliver their service to the Australian majority; how can they overcome the disadvantage in which they find themselves in the presence of migrant minority clients?

Leaving aside the mechanical or instrumental problems of bridging the language barrier, the biggest problem arises over the wide diversity in background and situation of the various ethnic groups in Australia and of the individuals within each of these groups who find themselves at different stages of integration with the majority culture. What of cross-cultural migrant marriages or of marriages between a native son/daughter and a migrant? Needs of migrants cannot be encapsulated in a blanket statement nor can the needs of the individual be erased or absorbed by ethnic considerations.

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The main purpose of this Project was to fill the gap in the existing knowledge of migrant clients and their passage through the Family Court so as to provide for a better service to them.

One of the main emphases of the project was to map out a pathway followed by migrant clients before, during and after their exposure to the Counselling Service as well as, to provide a fairly comprehensive, if only descriptive, picture of the important demographic, social and psychological characteristics of such population. The study was also intending to examine the impact of the service on this population.

It should be stated at this point that this particular population having come from a caseload of one counsellor might not be representative of the total migrant court's population and in particular might be overrepresented in terms of a particular language group, i.e. Spanish-speaking.

LITERATURE REVIEW

This review will focus on Migration as Life Experience, Demographic Profile on Migrants, and Migrants as Clients of Marriage Counselling Services.

Migration as part of life experience can be interpreted in terms of a psychosocial and psychophysical transition involving loss and change which is experienced as bereavement (Parkes, 1971, 1972 and Morris, 1974). Because of the accumulation of life changes it requires, it rates very high in any scale of stressful life events (Dohenwend, 1974)

Huntington (1982) places migration next to death or marriage breakdown among stress-inducing life events on account of the losses sustained by the individual's psychophysical being as to people, places and things. As she put it "it is the presence of the strange in the absence of the loved and familiar that is threatening to the very being of the individual". As regards the indi

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being, migration requires that the inner assumptive world accommodates to the outer world through time and that it becomes internalised.

Migration not only affects the individual's life experience but the whole family's as well - patterns of blame and responsibility set in in the face of the distress experienced, i.e. women migrating in their 30's already cut off from the new outside world by virtue of their childbearing years are more affected by the emotional distance and are more prone to depression as well as wishing to return home more often than men.

However, if the nuclear couple share the same cultural background their marriage should provide a buffer zone against experience of alienness.

If there is an intermarriage in the nuclear couple, either with a migrant of another culture or with a native son or daughter, this buffer will not be available and the foreignness in the spouse will become a further threat to the assumptive and physical world of the individual.

Cohen (1982) has interpreted cross cultural marriages in terms of problems in identity, even when one or two of the spouses cannot be considered to be migrants. She hypothesises that cross-culturally married men and women are seeking sex partners unlike those in their culture because the

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role as played by one of their parents was unacceptable to them. Cohen sees migrant men as quite often bound to their mother, while migrant women may be idealising absent father and seeking two mother figures for their emotional system: one in the husband, the other in the mother-in-law. Migrant cross-cultural marriages carry therefore the heaviest load in terms of emotional involvement in the partner.

Social investigators (Bernard, 1980) appear to have isolated two major causes for intermarriage: the availability of relationships with other marriageable persons and the individual's social characteristics. In the U.S.A. people intermarrying had mixed parentage, were of older age and were of Protestant country origin.

Another social variable described by Merton (1968) affecting marriages and their outcome is social integration or its reverse, anomia (lack of norms). He sees social integration as dependent upon a workable correspondence between culturally espoused goals and the availability of the means for attaining these goals. When a disjunction occurs between goals and means, severe reduction in the regulatory power of the normative structure follows and the frequency of deviant behaviour increases.

With regard to adaptation or socialisation of migrant groups there exist great differences, some are related to the point in time at which they migrated, i.e. older groups that came to Australia in the 40's (German, Dutch, Polish) came with money and professional training to escape political and racial persecution; while groups that came in the late fifties and early sixties, like the Greeks first and Italians to follow, came from rural backgrounds, low socio-economic levels and for economic survival purposes. The large numbers of South Americans arriving in the 1970's did so for "quasi political reasons".

Some differences in adaptiveness are related to interpersonal orientation as found by the Scotts (1982) in their study on ethnicity which examined such pre-migration variables as family structure, casual relations, need for affiliation, adaptation to country of origin and ease of transitory friendships. Results after migration showed that applicants exhibiting high anxiety (Slavs and Italians) experienced as settlers lower happiness, lower incidence of home ownership and higher incidence of health problems than applicants who had exhibited low anxiety and high self esteem at the time of application.

Demographic Study of Migrants

Storer (1981) reveals that non-English speaking migrant men and women by 25 years of age have a lower separation/divorce rate and a higher marriage rate than native born Australians. He mentions that the number of children in migrant families is close to the Australian average but because they often come to Australia during child-bearing years, divorce catches them with young children.

He describes in-marriage as being very high for Greeks, Italians, Maltese and Asians. The migrants involved in inter-marriage to Australians (apart from British and Americans) are the Dutch and German.

Krupinski (1971) points out that up to mid-70's the lack of extended family affected 80% of migrants in that a major social control mechanism was not available and conflicts in conjugal roles arising out of different amounts of socialisation or of cultural sophistication could not be absorbed by the extended family.

Storer's (1981) profile indicates that higher proportions of all migrants than Australians (both men and women) work as tradesmen and process workers. Non-English speaking migrant men are to be found in manufacturing and construction, while migrant women tend to work in primary industries as process workers, general labourers or service personnel. Non-English speaking migrants are underemployed with relation to skills (23% estimate jobs held now are lower than they had overseas). Number of non-English speaking income units in poverty is double the Australian average; not only is income lower but their rents or mortgage repayments are higher. Unemployment rates are also higher than local (between 10-14% depending on Ethnic groups).

Migrants as Clients of Marriage Counselling Services

Marriage Guidance Council of N.S.W. reports that non-English speaking migrant clients amount only to 8% of their female clients and 11% of their male clients (1978); 2/3 of them are shown to be of long stay in Australia (over 10 years) in half of the cases of marriage difficulty Marriage Guidance Council is approached by the wife only.

The Marriage and Family Counselling Unit of UNIFAM, reports (1982) non-English speaking migrants as representing between 20-22% of their client users. Of these, 40-50% are court-ordered clients. Among voluntary clients, they report that the husband is more often the contacter than the wife.

Family Court, Sydney Registry's Counselling Service figures, indicate non-English speaking migrant clients represent between 15% and 19% of their clients.

Triseliotis (1965) writing on the Greek migrant's approach to counselling, found such migrants to be more accessible to measures intended to alleviate pressing social needs rather than to seek help for resolution of interpersonal problems.

This is confirmed by Rodopulous (1977), also working with Greeks, who states that migrants will mostly seek assistance in getting a pension, being referred to a solicitor or to a particular formal service. Their trust in the helper will develop as a result of the help received, with the amount of professional training held by the helper not playing a major role.

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On the issue of worker-client cultural or sex congruence Santa Cruz (1975, researched the effect of high level of facilitative conditions on the part of the counsellor (high positive regard, empathic understanding and good communication) and found these to be a more powerful determinant of the quality of the helping relationship than client/counsellor, sex or cultural conference. He agrees that some of the problems presented as practical ones shadow real personality or interpersonal difficulties. He sees, however, the need for alleviating social pressures first because these aggravate pre-existing personal problems.

Teicher (1972) sees the problem of achieving effectiveness in counselling migrant clients as arising not only from the lack of acceptance by the host society of what are individual pluralistic attitudes but also from the dilemma faced by the bilingual, bicultural professional in deciding whether she/he should reinforce attitudes and values, which because of sharing of background she accepts and identifies with, but which go contrary to her training, i.e. how to make identity with the minority group and with the entire community a complementary and mutually reinforcing experience. His overall recommendation is not for specific but for general services developed in such a manner than a recognition of different cultural attitudes is reflected by the service.

On the delivery of service to non-English speaking migrants, Snyder (1977) recommends developing teams that include ethnic group volunteers and a bilingual, bicultural social worker, if found. The direct help should be given and offered by the ethnic agencies themselves supported by professional workers to whom the client in need of specialised service would be referred out to. Adequate training, support and oversight of volunteer members of the ethnic agency would have to be offered by the social worker, marriage counsellor, or other professional who would then move into the role of consultant, supporter and advisor to the volunteer.

Assumptions Derived from the Literature

A. Demographic Profile

1. Given all the cultural, social and psychological variables that affect the lives of migrant marriages, patterns of migrant divorces (average length of marriage, number of children per divorcing couple and number of divorcing couples with children) will be different from those of Australian marriages.
2. Percentages of migrant divorces involving children will be higher and more children will be involved in migrant divorces than in Australian divorces.
3. Ages of marriage of migrant men will be higher and of migrant women lower than for Australian population, men's life cycle having been interrupted by migration.

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4. In-migrant marriages celebrated in country of origin before migration will tend to last longer (because marriage offers a buffer zone against the unfamiliar and stressful culture) than either cross cultural migrant marriages or marriages between a migrant and an Australian son/daughter.

5. In-migrant marriages celebrated after migration to Australia will be shorter in duration than those in country of origin and the number of children will be less than in the latter, because of integration with concepts prevalent in country of adoption. This will be particularly true for individuals migrating prior to the family reunion scheme of the mid 70's, lacking the major control mechanism of the extended family.

6. Migrant and native son/daughter marriages will have the shortest duration of the three types and will be unidirectional, i.e. migrant men marrying Australian women.

7. Role discordance in family members, as the result of migration, will be greatest among those ethnic groups where differences accorded by culture to role status of men and women are greater, i.e. patriarchal societies with men in privileged position. Women in those marriages will be the "leavers".

B. Counselling Process

1. Most migrant clients are likely to enter the counselling service in a court-mandated intervention rather than through voluntary counselling. Time elapsed between

separation and contact with the service will be greater than for Australian clients.

2. Migrant couples will present with greater number of problems (both related to issues arising out of the particular crisis, i.e. marital break-down, and to health and environmental issues) than Australians.
3. The number of episodes requiring intervention, the number of sessions and the life span of the case will be longer and the number of people included in interviews will be greater than for Australian clients. Number of counsellors involved will, of necessity, be greater too.
4. Problems regarding the welfare of children will show a greater focus on access than is the case for Australia couples, on account of acceptance of traditional sex roles by most migrants, i.e. woman will be automatically accepted as caretaker of young children.
5. From experience as a counsellor of about 4 years duration, access and custody disputes will tend to show a relationship to the number of children in the family; the smaller and longer families will fight for access, while the medium size families (2-3 children) will fight for custody.
6. At least half of the migrant couples will require services of interpreters. This will increase the time span required before service delivery and require greater effort to reach agreement.
7. The proportion of migrant clients with outside agency

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involvement at time of referral will be greater than for Australian population, given the additional stress that migrants experience on divorcing and their feeling of not handling their life as successfully as most.

C. Counselling Outcome

1. Overall agreement rates for conciliation conferences will be lower for migrant couples than for Australian clients.
2. Agreement rates will relate to interval between separation and counselling contact, i.e. early contacters will have a better chance of resolution.
3. Number of court-ordered interventions per case will be greater than for Australian divorcing cases.
4. Conciliation of access disputes will be easier to reach than conciliation of custody disputes.
5. Agreement rates will decrease with duration of marriage and with cross-cultural marriages.
6. Living arrangements after separation, given the under-privileged economic position of most migrant couples, will tend to favour the return to the extended family for the caretaking parent rather than independent living or reconstruction of family through blending.
7. Need for referral during and after termination will be greater for migrant clients.
8. The best type of service delivery for migrant clients will require inclusion of direct help from ethnic agency workers. Such co-workers would require training and support from counsellors.

THE STUDY

The Sample

The study sample consisted of 100 cases* which represented the caseload of migrant clients seen by the researcher (court counsellor) during 1981-82. This particular group of clients were seen for services provided for by different sections of the Act, i.e. a portion came from solicitor referred sources or elected to be counselled on the recommendation of friends, etc. and their counselling was confidential, and another portion came from the Family Court or other courts and their counselling was both confidential and reportable but court-ordered.

Data collection procedure

The information for this study was obtained from secondary sources consisting of clients' information card, supplemented by clinical notes of the researcher. In addition, in appropriate cases, other court documents were examined for relevant information.

Data treatment

The data will be presented in a discreet series of sections such as:

A) Demographic profile of the sample,

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* In order to obtain a sample of 100 couples with children, 108 cases had to be processed by the researcher. Cases were taken as they presented themselves.

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B) Counselling Process,

C) Counselling Outcome.

With regard to Demographic Profile, important features analysed were: ethnic origin of the sample, cultural mix of the marriage, duration of marriage, place of marriage, number of children involved, occupation and educational levels, duration of stay in Australia, interval between marriage and separation, point of marriage breakup in respect of length of marriage, interval between year of arrival in Australia and year of separation, children's living arrangements.

In respect of Counselling Process, variables included were: type of presenting problem, total number of presenting problems, source of referral, time between separation and first counselling contact, sequence of counselling interventions, type of intervention at each contact, total number of interventions and spacing between these, total life span of the case, total number of counselling sessions, use of interpreters, involvement of other agencies, number and combinations of family members seen in counselling.

Counselling Outcome dimensions were: agreement rates, referral out on termination.

RESULTS - SOCIAL AND DEMOGRAPHIC DATA

Before entering into interpretation of results from Tables 1-7 it should be stated that the Court Counselling Service clientele more often than not involves disputes over ancilliary matters in addition to divorce, particularly the matter of the children's welfare. As such, it is not directly comparable to the total divorce population.

(Insert Tables 1, 2, 3 & 4 about here)

In the study sample some primary ethnic groupings are significantly overrepresented (Table 2). The explanation for this is related to the author's country of origin. In two other instances there appears to be a slight under-representation of Yugoslav and other Western European communities.

1. The general findings of this study reveal that on the broad dimensions of marriage and divorcing age, patterns of length of marriage, number of children per divorcing couple and occupational and educational levels, the migrant sample differs from the general divorcing population.

The average age at marriage for migrant sample was 28 years 5 months for men and 23 years 5 months for women. Age at divorce for migrant couples is higher for both men and women than for the Australian divorce population. This data supports Storer's findings (1981).

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Duration of marriage distribution for the sample differs from the general divorce population in that there are less marriages under 5 years duration and more between 10-14 years than for Australian divorce population. This is largely explained by the nature of counselling clients and the emphasis on disputes over children of primary school age.

As expected, duration of marriage had a significant relationship with number of children in the marriage. The number of children per divorcing migrant couple was 1.9, while for Australian divorcing couples the average number is 2.0.*

The occupational level of the migrant sample showed husband's and wife's levels to be significantly related. There was over-representation of the blue skilled and semiskilled classifications for men, thus supporting Storer's profile. Two thirds of the women were in the blue collar semiskilled and home duties categories. Women married to blue collar workers were more likely to be involved in home duties.

Within the migrant sample itself, more women than men had over three years of high school but the number of qualified women (trade, diploma, tertiary) was lower than men. Overall sex differences are comparable to the Australian divorce population (1981 Census Qualification Levels for Males and Females over 15 years of age, for previously married category).

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* These percentages refer only to divorcing couples with children. For all divorcing couples figures were respectively 1.6 and 1.2 per couple.

Although no direct relationship was found to exist between educational level of husband and number of children, a trend was observed suggesting that primary only educated husbands are much more likely to have larger families (3+ children). The relationship between the wife's educational level and the number of children was statistically significant, i.e. the less educated women had a larger number of children. The sample contained 10% of individuals who had only completed primary school and was under-represented in the tertiary figures.

2. About half of the sample had lived in Australia less than 10 years. The number of years in Australia was higher for the male migrant than for the female counterpart.

(Insert Table 5, 6 & 7 about here)

3. A sizeable proportion of migrant couples (42%) separated within the first five years of migration. 36% separated within the next five to ten years and 21% separated after ten years.

4. The cultural mix of the marriage appears to have some influence on its duration: in-migrant marriages are twice

as likely to go beyond the first four years of marriage than migrant inter-marriages which have a 50/50 chance of going beyond 5 years. Marriages between an Australian son/daughter and a migrant last the shortest time of all marriage combinations in the sample.

5. A relationship was found to exist between duration of stay in Australia for husband and wife and the cultural mix of the marriage, i.e. men marrying women from their own country are better represented in the more recent arrivals in Australia, while women marrying men from their own country are among those with longest stays (some of these women could be the "proxy" wives of '50 and '60 years).

6. Both cultural mix and place of marriage influenced the number of children in the marriage, i.e. marriages celebrated in Australia had fewer children (1.7 per couple) as opposed to those celebrated in country of origin (2.2 per couple).

7. Migrant women in sample initiated separation action more frequently than women in Australian divorcing population (they were the "leavers" in 62% of cases). The number of previously married among the sample was half the size of that for Australian divorcing population.

8. The vast majority of sample children (79.2%) were living with their mother at the time of counselling contact.

70% of the total number of children in the sample were under 10 years of age. In view of the earlier assumption that the migrant mothers are more likely to be the care and control parent due to the young age of children involved and the traditional sex roles operating in such communities, these findings were as anticipated. The observed arrangements for migrant clients were further compared to a sample of court-ordered conciliation conference clients in Sydney Registry which offered additional support to the above assumption.

Children's living arrangements were not found to be significantly influenced by the parental cultural mix. However, they were significantly influenced by the number of children in the family: very small (1 child) and very large (4+ children) families remained in mother's care. Families with 2-3 children were more likely to be involved in shared or father care.

(Insert Table 8 about here)

RESULTS - COUNSELLING PROCESS

A large component of counselling process was tested in terms of the following units: episodes, which refers to the number of contacts including original and recontacting instances, either voluntarily or sent by the court; sessions, which refers to the number of face-to-face contacts across episodes; intervention type, which refers to the sequence of counselling of different types; life span, which refers to the total amount of time elapsed from first to last contact with the service, or to cut-off date for the study.

(Insert Table 9 about here)

1. Most migrant couples (69% presented in the first year of separation; of these 39% presented in early separation (1-6 months). Comparison of the "early" migrant figure with the equivalent figures for Sydney Registry clientele for 1981 and 1982 (54% and 63% respectively), indicates a lag in migrant numbers. However, proportions are even for couples presenting between 6-18 months into separation (43% for migrant sample and 46% and 37% respectively for Sydney Registry for years 1981, 1982).

2. A significant relationship was found to exist between interval between separation and time of counselling contact and cultural mix of the marriage: Australian/migrant intermarriages presented the earliest of the three categories.

3. Analysis of referral sources suggests a 70/30 split between court referrals and other sources (legal, self, health and welfare). Such proportions are not reflected in the general Sydney Registry Counselling clientele where 50% of caseload comes from non-court referred sources. In particular the self-referred migrant category is significantly underrepresented in terms of the total

counselling workload.

4. Custody and access were the primary presenting problem arising out of the marital breakdown. Custody presented in 40% of cases and access in 60% for the sample. These figures are comparable to other counselling clients for which conciliation conferences were held: (37% for custody and 63% for access). Although the proportion of Custody to Access applications for the Sydney Court Registry clientele is of 60% to 40%, it must be remembered that counsellors' workload for confidential conciliation conferences is predominantly access-related; custody cases are underrepresented in terms of their incidence of application because they often lead to preparation of Family Report.

There appears to be a relationship between the number of children per family and the probability of custody problems. Families with 4 or more children are least likely to present with custody needs (30%), followed by families with one child only (45%), while the 2-3 children family is most likely (56%) to be involved in custody disputes. It seems as if a large number of children makes the sibling subsystem almost into a total system (some siblings taking care of others, or family allegiances become stronger between siblings than between parent/child). In families with 2-3 children the number is large enough to have both sexes represented, more often than not in a 2/1 ratio, so that rivalry between the sexes and child/parent allegiances across the sexes or intrasex become very marked and the sibling subsystem is split in its reaction to the breakdown.

Access problems, on the other hand, while still related to the number of children, operate in the opposite direction to that of custody, i.e. one child and 4+ children families are more likely to express access problems (81 and 80% respectively), with the 2-3 children family unit being least likely (65%) to experience such problem. Possibly access problems in the single child family represent an off-shoot of unfavourably resolved custody determinations, i.e. parent failing to get custody will feel robbed of parental role. In the case of large families, the difficulty with access is more likely to arise out of the children's attitude to access (non-compliance) than to parental opposition to it because the children find their strength within the sibling system and in their peers contacts and community involvement.

(Insert Table 10 about here)

5. Half of the migrant sample presented with 2 or 3 different types of problems; only 25% presented with one problem only. Access was the most frequent problem followed by custody, need for reconciliation, problems with new relationships and problems with the extended family. The distribution of presenting problems (Table 10) mirrored the observed frequency of such problems reported by the conciliation conference population in general. The only

significant differences were in terms of the higher incidence of expressed need for reconciliation and the somewhat underrepresented incidence of reported violence recorded in the study sample.

Property as a presenting problem proved to be significantly related to marriage duration, i.e. only the longer marriages presented with property problems as such.

6. Voluntary counselling was the first form of intervention for 40.3% of the sample; however, only 15 of these remained voluntary clients throughout. The majority of sample cases had an assortment of voluntary, court-ordered confidential or reportable conferences. The most common type of intervention was an ordered conciliation conference (43.6% had one conference and an additional 6.6% had two).

The sequence of interventions was not significantly related to the total number of presenting problems. A direct relationship was observed between the complexity of the presenting problem and the number of intervention types needed to handle it, i.e. a problem like custody required at least three types of intervention.

(Insert Tables 11 & 12 about here)

7. The average number of episodes per case was two and the average number of face to face contacts per episode

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two, as was the number of counsellors involved . Half of this sample presented only for one and saw one counsellor, while 48% presented for between 2-3 episodes and were involved with at least that number of counsellors. The number of face-to-face contacts in conciliation conferences revealed a trend towards the establishment of a relationship with marriage duration, i.e. the longer the marriage the greater the number of sessions needed.

8. The total life span of a case went beyond one year for 65% of clients, with some clients extending up to 3 years and above. A significant direct relationship was found to exist between total life span and interval between first and second episodes, i.e. the longer the interval between these, the longer the life of the case; this relationship did not apply for intervals between subsequent contacts.

9. The most common form of interview was conjoint sessions for the parents (38.9%). Children were seen additional to parents in 34% of cases, while significant others were seen in 17% of cases. This was in keeping with the researcher's systems orientation approach to family problems as well as with the importance accorded in migrant cultures to the extended family.

10. The lower number of episodes and of over-all sessions with the Spanish-speaking clients may bear some relationship to the indigenous character of the counsellor. More important factors, however, in the researcher's opinion, were: a) the clients had contacted the service early in separation (this ethnic group had been targeted for radio talks and public information meetings in different suburbs), b) given the extensive network of services available and the interagency contacts, referrals could be made direct to one worker and for a specified goal, and c) continued consultation after termination was ensured through personalised contact between the counsellor and ethnic worker.

RESULTS - COUNSELLING OUTCOME

Selection of outcome criteria is a very complex problem when looking at therapeutic interventions. Criteria used can be the clients' self-report or some other measure such as, used in this study, the agreement rate as reported in a memo to the judge. Another possible criteria is the presence or absence of relitigation. None of the measures are satisfactory in themselves and the debate continues on as to what constitutes success in counselling situations. The most reliable measures for this study appeared to be the memos sent by counsellors to the referring judge following a conciliation conference or counsellor's outcome assessment comments in the case of voluntary clients at completion of the case.

(Insert Table 13 about here)

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1. Agreement rates for conciliation conferences for the migrant sample when research counsellor conducted these were comparable with those recorded by the Counselling Service for the counselling population at large (65%). However, they were not comparable to level achieved in researchers' own work (10% lower) with counselling population at large. These two differing outcomes can be reconciled by the fact that counsellor variable has been found to affect rates of agreement for the Service at large.

Another point of interest is the fact that historical data suggest a constant increase in success rates with migrant clients. Whereas the earlier figures registered only a 30-35% agreement rate for migrant clients, in the last two years, through interpreter training and grant-in-aid workers in ethnic agency training, the rate indicates an ongoing improvement, presently registering between 40-45% agreement.

2. Relationship between agreement rates and sociodemographic and process variables failed to show overall satisfactory statistical significance. In general, the less complex a case, the more likely its resolution. Also cases presenting in early separation (as well as "fresher" cases) were more likely to reach agreement. Agreement as to access disputes was easier to reach than as to custody.

3. A significant relationship was found to exist between the total face to face exposure and the likelihood of conciliation. That is, if by first two sessions clients did not agree, the chances dropped dramatically for subsequent sessions. This is supported by the Counselling Conference Study. It must be noted that the total face to face number of sessions includes reportable cases which do involve more than two sessions per case and do not represent a good potential for conciliation efforts.

4. Although the distribution was too skewed towards agreement to allow for proper testing, a trend was found to exist to suggest that cases that present early (under 6 months) in the separation are more likely to reach agreement. This trend is of importance for practice directions and is supported by the Counselling Conference Study (Bordow, 1983).

5. Although not statistically significant, there is a trend to indicate that the less complex cases are more likely to conciliate in conferences (Op. Cit. supports that).

6. Although the relationship just misses to be statistically significant, there is a clear trend that indicates that access disputes are likely to be conciliated while custody cases are more resilient to conciliation efforts.

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7. Interpreters were needed for half of the sample by at least one member of the couple (in 16% of these they were dispensed with on account of foreign language proficiency of the cousellor or availability of trained ethnic worker as co-counsellor); Length of stay in Australia and need for interpreter was significantly related for husband, i.e. more recent arrivals needed more interpreters, but not so for wife.

8. No significant relationship was found between conciliation conferences' outcome and use of interpreters, nor between use of interpreters and total number of face to face sessions or life span of case.

9. Referrals on termination were made for 50% of the sample. A significant relationship was found to exist between agency involvement at time of first contact with the counselling service and need for referral on termination, i.e. clients referred to the service by more than one agency were in greater need of referral on termination. The most frequent referral was to a service facility for children or to community agencies conducting parental skills classes or running self-help groups for single parents. Clients with no previous involvement with other agencies stood a 50/50 chance of such referrals on termination of counselling.

OVERVIEW OF RESULTS

1. In answering the question of observed differences between the migrant divorce population and the Australian divorce population on the basis of the present study, it must be born in mind that the available comparisons are largely in terms of demographic and marriage history. In this respect they differed in terms of age at marriage and age at divorce, duration of marriage which was found to be a function of the cultural mix, number of children, occupational and educational levels. Hypotheses with regard to the issue of cultural mix and duration of marriage were confirmed.

2. With regard to the question of how does the migrant clientele of the Counselling Service differ from its general clientele, the answer is that the above demographic differences between these two sub-populations are reduced because of the general nature of the Counselling Service population which is heavily biased towards people of a certain age on account of its focus on helping parents with children.

3. The question directed at counselling process, i.e. is the service dealing with the migrant population in any special manner, can be answered by stating that, based on the type of information tested in the study there are significant differences in terms of counselling process as defined by: source of referral and point in time during

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the separation at which the contact with the service occurred, type of major presenting problem, number of ancilliary problems related to the marital breakdown, type and sequence of intervention, number of episodes and number of face to face sessions, total life span of the case and the pattern of interviewing family members.

Hypotheses as to why they are dealt with differently can be formulated at several levels. One level is in terms of inter-counsellor differences, i.e. it could be said that the idiosyncratic handling of the present sample by one counsellor is responsible for some of the differences. In this respect attempts will be made at a later stage to check how the body of counsellors as a whole deal with the migrant population.

At a system level, we could hypothesize that the migrant population are dealt with differently because their demands are different, i.e. they present less "fresh", "later" in separation and most frequently are "court-referred".

4. On the issue of difference in results or outcome for the migrant and Australian clienteles of the Service, the answer must also be considered at a number of levels. With regard to the specific intervention of confidential conciliation conferences, the counsellor variable was controlled, in the sense that agreement ratios for those conferences were obtained from conference caseloads conducted for both

populations by the one counsellor, namely, the researcher. In this respect, the migrant population level of agreement was lower than for the non-migrant population and took greater number of sessions to achieve.

By the same token, if the researcher/counsellor's level of conference success is compared to the level of Registry's overall rate of agreement for all confidential conferences, results for court-referred work appear to be within the expected percentages, even if it takes longer to conciliate the dispute.

A point of interest on the issue of results is the time related increase in success rates with the migrant sample which appears to be synchronised with the development of the concept of Australia as a multicultural society.

5. The last issue to be addressed is whether the study points to some special needs of migrant clientele that are specifically ascribable to the circumstances of their migrant and ethnic minority position. One of the assumptions that had been made in the early years of the service was that interpreter use interfered or delayed therapeutic outcome. This was not proven to be so. It is possible, however, that the large sample proportion of Spanish-speaking clients jacked up the overall observed success rate as for such clients the therapeutic intervenor was both a member of the culture and the language of the client.

Had the group included more Yugoslav and Italian clients (two groups identified by Scotts (1982) as having low chances of processing migration without considerable stress) would the results be equally promising?

The study confirms the overall need for migrant clients to enjoy an agency based network support during the early stages of separation and for referral on termination of counselling if subsequent transitions in family reformation are to be well handled.

CONCLUSIONS

A number of issues arise out of the study that have direct implication to policy and practice of the Counselling Service in the Sydney Registry.

1. Since the philosophy of the service finds expression in the practice of early contact intervention which is presently subscribed to by a large majority of the clientele, results suggest that migrant clients' first contact is delayed - although it is still fairly sizeable within the first year of separation.

Since most of the counsellor's work is dependent on the education of the consumer and its intermediaries (frontline workers outside the service) obviously emphasis at those two levels could have direct impact on early referral of future clients.

2. Perhaps it is a consequence of the legal status of migrants that they see themselves as individuals not in control of their destiny and in need to have "the authorities" intervene in a directive way when faced with difficult situations. Whatever the cause, the goal for the service is to minimise court-referred work and increase self-referral through encouraging ethnic agency workers to present with them, either personally or over the phone, and to disseminate information about the service at the level of the potential client. To do this the workers themselves must be well informed; given their enormous turn-over, the Service may have to make periodic efforts at this.

3. The study only touched upon a crude measure of the amount of time involved in and frequency of counselling interventions. Although the migrant sample appeared to have used a large share of our resources, the therapeutic interaction seems to have been helpful for most and the inclusion of the children and significant other adults in the sessions seems to have worked in favour of upholding rather than undermining the effect of the sessions.

4. Results obtained with the Spanish-speaking group have a direct inference for handling of total migrant population. Their network brought them earlier, they were supported by ethnic workers who consulted with the court-counsellor as did other professionals involved and their extended families were included in the sessions, where necessary.

5. It is finally worthwhile to put to rest the issue of use of interpreters and need for bilingual counsellors. The use of interpreters does not appear to interfere with results of counselling, nor does it delay the case (unless they are on strike or members of the trained panel are disbanded) or increase the number of sessions. It is feasible to suggest that selective training of interpreters by the counselling service pays off in that the same interpreter can service several sessions of one case and guidelines for consultation are established beforehand so that there is no danger of interpreter interference during the sessions.

6. Finally, the present study may reflect and be dependent to some extent on the orientation, skills and procedure used by the particular counsellor/researcher. It proves, nevertheless, that given the commitment, background and understanding of the specific needs and issues involved, a satisfactory delivery of service can be achieved and needs of migrant clients can be met without a call for a "specialised" service. The working of such premise is conditional on the availability of support material in ethnic languages.

Table 1

COMPARISON OF SOCIO-DEMOGRAPHIC DATA

Divorced Migrant Sample 1981-1982 N=108		Divorced Australian Sample 1981 N=41.088	
Average age at marriage		Average age at marriage	
groom	28 yr 5 mo	groom	27 yr 3 mo
bride	23 yr 5 mo	bride	24 yr 3 mo
Average age at divorce		Average age at divorce	
husband	38 yr 5 mo	husband	35 yr 8 mo
wife	33 yr 7 mo	wife	33 yr 2 mo
Duration of marriage at separation		Duration of marriage at separation	
under 5 yrs	20.6%	under yrs	36.4%
bet.5-9 yrs	26.8	bet.5-9 yrs	24.9
bet.10-14 yrs	25.1	bet.10-14 yrs	15.9
bet.15-19 yrs	10.2	bet.15-19 yrs	10.2
bet.20-24 yrs	5.5	bet.20-24 yrs	7.0
over 25 yrs	1.8	over 25 yrs	3.5
Marital status of parties at marriage		Marital status of parties at marriage	
previously divorced	16.0%	previously divorced	34.3%
Delay between marriage & birth of first child		Delay between marriage & birth of first child	
	2 yr 5 mo		2 yr 3 mo
(19% out of wedlock)		(13% out of wedlock)	
Number of children		Number of children	
no children	9.3	no children	38.9%
one child	30.6	one child	21.5
two children	38.9	two children	25.6
three children	13.2	three children	10.4
four children+	9.3	four children+	4.0
Children living arrangements at counselling contact		Children living arrangements at counselling contact	
mother	79.2%	mother	71.4%
father	7.3	father	18.6
split care of children	8.3	split care of children	[illegible]
joint physical	4.2		
family or other	1.0		
Divorce action initiated		Divorce action initiated	
by husband	38.0%	by husband	41.6%
wife	62.0	wife	58.4

* Data from Conciliation Conference Research Report (1983)

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Table 2

COMPARISON OF THE STUDY SAMPLE AND THE MIGRANT CLIENTELE OF THE SYDNEY REGISTRY COUNSELLING SERVICE

	Migrant Sample % (1981-82) N=108 couples		Sydney Registry Counselling Service. Migrant Clientele %(1982) N=500 couples
Country of Birth	Husband	Wife	Husband
Greece	15.7%	11.1%	12.0%
Italy	14.8	8.5	11.5
Spain & S.A.	30.1	37.1	10.0
Arabic	11.0	11.1	13.0
Yugoslavia	9.3	3.4	22.0
W. Europe	14.6	8.4	27.0
Turkey	1.8	.9	3.0
S.E. Asia	1.8	4.6	2.0
Australia	.9	13.9**	
TOTAL	100.0%	100.0%	100.0%

* The protocol of classification includes husband's country of birth only

** Data confirm Storer's profile in that the 15 Australian wives were married to Dutch and German settlers.

Table 3

EDUCATIONAL LEVEL OF MIGRANT SAMPLE

Level of Schooling	Husband	Wife
Primary school only	8.5%	10.4%
Two or three years H.S.	34.0	43.4
Completed H.S. or trade	38.7	33.0
Diploma	15.1	11.3
Tertiary	3.7	1.8
TOTAL	100.0	100.0

Table 4

OCCUPATIONAL LEVEL OF MIGRANT SAMPLE

Occupational Categories	Percentage hus.	 wife
Professional	6.6	5.7
Self-employed (other than Professional)	8.5	4.7
Skilled White Collar	11.3	13.2
Semi-skilled White Collar	8.3	16.0
Skilled Blue Collar	24.1	2.8
Semi-skilled Blue Collar	38.9	24.5
Unspecified, other & home duties	2.3	32.8
TOTAL	100.0	100.0

Table 5

DURATION OF STAY IN AUSTRALIA
BY SEX

No. of years	% Husband	% Wife
Two years or less	5.7	6.9
Three to five	6.7	10.3
Six to ten	19.0	31.0
Eleven to fifteen	26.7	27.6
Sixteen to twenty-five	23.8	19.5
Over twenty-five	18.1	4.6
TOTAL	100.0	100.0

Table 6

CULTURAL MIX AND PLACE OF MARRIAGE CATEGORIES

N=108 couples

CULTURAL MIX OF MARRIAGE	PERCENTAGE
Migrant and Australian married in Australia	14.8%
Migrant in-marriage married in country of origin	26.9
Migrant in-marriage married in Australia	28.7
Migrant cross-cultural marriage in country of origin	3.7
Migrant cross-cultural marriage married in Australia	25.9
TOTAL	100.0 %

TABLE 7

TIME INTERVAL BETWEEN MIGRATION AND SEPARATION

N=108 Couples

CATEGORIES	PERCENTAGE
Five years or less	42.4
Between five and ten years	36.4
Between ten and twenty years	21.2
TOTAL	100.0

TABLE 8

COMPARISON OF CHILDREN LIVING ARRANGEMENTS FOR MIGRANT SAMPLE AND CONCILIATION CLIENTS IN SYDNEY COUNSELLING SERVICE

Migrant Sample N=108		Conciliation Clients N=70	
Mother only	79.2%	Mother only	71.4%
Father only	7.3%	Father only	18.6%
Split care	8.3%	Split care	10.0%
Shared physical	4.2		----
Other*	1.0		----
TOTALS	100.0%		100.0%

*"Other" here means the children were living with individuals other than the parents.

Table 9

COUNSELLING PROCESS OF MIGRANT SAMPLE

Presenting Problem		Involvement with other agencies at Counselling contact	17.6%
Custody	39.7%		
Access	59.3%		
Total no. of Presenting Problems per case		Client grouping at interview:	
One problem	26.9%	One partner	9.3%
Two problems	33.3	Both partners	38.9
Three problems	20.4	Both p. & children	34.3
Four problems	18.5	Both p., ch. & other adults	17.5
Five problems	0.9		
Source of referral:		Number of counsellors per client couple	
F.C. & other courts	70.4	One	50.9
Legal profession	13.9	Two	19.4
Self	8.3	Three	20.4
Welfare	4.6	Four	8.3
Marital & mutual health services	2.8	More than four	1.0
Interval between separation and counselling contact:		Use of interpreters	
Under 6 mo.	38.8	Cases in need	51.1%
Bet.6-12 mo.	29.4		
Bet.1-2 yrs	24.5		
Bet.2-3 yrs	5.9		
Over 3 yrs	1.4		
Total no. of episodes		No. of referrals on termination	50.0%
Once	50.9		
Twice	34.3		
Thrice	13.9		
More than three	0.9		

TABLE 10.

PRESENTING PROBLEM *

Problem Categories	% of Cases
Custody	39.7
Access	59.3
Property	19.0
Maintenance	24.0
Extended family	24.0
Injunction	7.4
Separation	20.4
Reconciliation	33.3
Religion	5.0
New relationships	26.9
Violence	13.9

* More than one problem per client is possible.

Table 11

TYPE OF COUNSELLING INTERVENTION*

Type	Percentage
Voluntary Counselling only	15.0%
Conf. Conference & Vol. counselling	23.0
Reportable Conference & Vol. counselling	10.5
Vol. C. & Conf. or Reportable Conference	25.5
Family Report & other court ordered int.	17.0
Conf. & Reportable Conference	9.0
TOTAL	100.0%

*Voluntary counselling, refers to either voluntary conciliation counselling to find resolution to a dispute or to individual or couple counselling; Confidential Conference, refers to court-ordered conciliation conferences under Section 62(1); Reportable Conference, refers to court-ordered conferences that are written up in the form of a report to the judge; Family Reports, refers to psychosocial report ordered by the court in all cases of contested custody and in some cases of contested access.

TABLE 12

AVERAGE NUMBER OF DIFFERENT TYPES OF INTERVENTIONS AND TOTAL NUMBER OF COUNSELLING SESSIONS BY ETHNIC GROUP

Ethnic Group	Number of Interventions per case	Counselling Sessions per case
Arabic	2.0	3.0
Greeks	2.1	4.0
Italians	2.6	3.6
Yugoslavs	2.4	4.6
Spanish	1.8	1.8

Table 13

STUDY SAMPLE AGREEMENT RATES COMPARED WITH NON-MIGRANT CASELOAD AND SYDNEY COUNSELLING SERVICE AGREEMENT RATES*

Research counsellor agreement rates for migrant sample 1981-1982 N=52	Research counsellor agreement rates for a non-migrant caseload 1981-1982 N=52	Counselling Service agreement rates for conciliation conferences 1982
Registered agreement 63.0%	Registered agreement 74.0%	Registered agreement 65.0%

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* Counselling Service agreement rates for conciliation conference clients involve results of 16 counsellors.

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The south-west aboriginal and family law

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1. INTRODUCTION

This paper describes the south-west Aboriginals' acceptance of Australian family law enacted in the legislation of the Family Law Act of Australia (1975) and the Family Court Act of Western Australia (1975). It shows that the Noongar (south-west Aboriginals), like other Aboriginals, have a coherent system for making decisions governing family relationships, but this is at odds with the rest of Australian family life which accepts the nuclear family model of one mother and one father living with and parenting the children.

While custody arrangements after marital separation are focal to this study, they are set in the context of marriage and family living within Noongar society. They assist not only in an explanation of family "law" among the Noongar, but also in describing the strength of the sub-culture within Australian society, despite the ravages on the traditional way of life which have occurred since white settlement of Western Australia in 1829. For "family" or the " 'lations" are the heart of Noongar life, and the strength of family affiliation goes a long way to explain the preservation of a distinct culture which has defied assimilation despite aggressive government policies for over a century.

The Australian Law Reform Commission (1982) is already endeavouring to analyze Aboriginal customary law throughout Australia, particularly in more traditionally-oriented Aboriginal communities, with the intention of providing such communities with access to more appropriate law which reflects their own culture. While something like two-thirds of Aboriginal families do not live traditionally today (Berndt, 1977:28), little material has been collected on the mechanisms operating among them to assist in adapting Australian family law to the contemporary situation. Meanwhile institutions such as the Family Court, and others intervening among Aboriginal families, often function from the philosophic assumptions of the majority Australian culture based on acceptance of the nuclear family model.

Urban Aboriginal society is not easy to describe because its membership is not as tightly constrained by residence as are traditional Aboriginal communities. Moreover definitions of aboriginality have bedevilled white and, no doubt, Aboriginal Australians since the first half-caste births occurred soon after settlement. The present definition which allows persons to choose to be Aboriginal so long as they are accepted by the Aboriginal community as such, perpetuates confusion to some degree. However, it is argued in this paper that the Noongar of the south-west of Western Australia can claim a distinct culture, many aspects of which arise from the traditional life, and continue in modified form as an intricate web of relationships which solidly strengthen Aboriginal society within Western Australia and indeed, across Australia. With rising mobility through increased communication and transport, the many Aboriginal groups of Australia begin to intermingle and present a coherent, if multi-faceted form, so any two Aboriginals commonly share more with each other than either will with a Wadjela (or "white fella"):

> "while the Aboriginal population is highly diverse . . . a number of values . . . appear to have remained constant within the diversity." (Watts and Henry, 1978:26)

The first section of this paper sets out to outline the utilisation by the Noongar of the Family Court of Western Australia for decisions on custody and access after marital separation. It relies on material collected from a sample of lawyers, counsellors, clients and judiciary of the Family Court of Western Australia in early 1983. The following sections seek to describe the mechanisms of family formation, dissolution and re-formation among the Noongar, as a way of further understanding their customary law. It relies on historical information, data from interviews and client contacts, and from ad hoc contact with the Noongar in both work and personal contexts. It is supported where possible by other research literature. It is acknowledged that this data continues to raise questions for further study as much as it contributes to answering major issues on the contemporary Aboriginal's understanding of customary family law in general, and the custody of children in particular.

2. NOONGAR AND FAMILY LAW

The Family Law Act of Australia (1975) provides for dissolution of marriage and for conciliation of the differences between parents, especially on matters concerning custody and access of children. In Western Australia, the Family Court Act of Western Australia (1975) allows provisions concerned with the future care of children to be extended to couples who are not married and to other interested parties, such as grandparents. This enables Aboriginals who usually choose to marry "kangaroo style" (i.e. according to customary law) to avail themselves of the facilities of the Court in relation to injunctions, and custody, access and maintenance of children. Financial settlements cannot be brought before the Family Court of Western Australia unless the couple are legally married.

European Australians have a long history of recourse to the law for decisions on divorce and custody, but it appears that urban Aboriginal Australians (with their traditional brothers and sisters) are unlikely to use a legal resolution on relationship breakdown. As a means of gaining data on Noongar use of the Family Court of Western Australia , a third of all family law practitioners in the State were contacted by questionnaire. Twenty-two of the eighty-two questionnaires were returned. It is probable that few of the others have contact with Noongar clients. Two questionnaires were returned from Aboriginal Legal Service offices in the north of the State, and one from a legal firm in Kalgoorlie. Of the nineteen returned from the south-west, only seven had any contact with Noongar clients. One of these was the Aboriginal Legal Service in Perth which estimated seeing one client a day for family law matters. Four other questionnaires returned by Perth solicitors reported seeing only the occasional Aboriginal family. One solicitor on the south-west coast reported seeing two Aboriginal families a month, and one in another south-west country town reported contact from less than one a month.

Another means of evaluating Aboriginal contact with the Family Court was through collecting statistics of Aboriginal clients visiting the Counselling Service over a one-month period in April 1983. During this time, one Noongar came on a self-referred basis, and three were ordered by the Court. Information was also sought from a Deputy Registrar, a Judge and the Chairman of the Family Court. All agreed that Aboriginal contact with the Court was rare. It was mentioned that defended hearings for Aboriginal parties are particularly rare and usually involve a non-Aboriginal party, who takes the initiative in applying to the Court.

The Aboriginal Legal Service pointed out that the Noongar have problems with the adversary process of the Family Court, because it means they (A.L.S.) can represent only one party. Most Noongar are reluctant to seek private representation even when eligible for legal aid. All informants - solicitors, counsellors and the judiciary - mentioned that where the Noongar seek legal advice, they tend to reach early resolution of differences, either by legal negotiation or between themselves.

It appeared from the solicitors' answers that one of the major uses of the Family Court by the Noongar was in obtaining injunctions or non-molestation orders. Return of children who have been snatched was also mentioned several times. Of all the informants, only one of the lawyers felt that Aboriginal use of the Family Court was similar to that of other Australians. There was common agreement that Aboriginals tend to avoid going to the Family Court because of their belief that courts are for punishment, and also because of their lack of trust in, and ignorance of, the Family Law Act. There was a consensus that the Noongar tended to sort things out amongst themselves within the extended family, and that they often failed to keep appointments and Court appearance times. Lawyers also emphasized that applications for maintenance and property settlement were rare. It has already been noted that if Aboriginals marry informally, they are unable to apply for financial settlements in the Court. Property ownership is less frequent and less actively pursued as a goal than among European Australians. Since many Noongars are on social welfare payments, maintenance claims for children would usually be inappropriate as well.

Consolidation of the above infomation leads to a recognition that the contact of the legal profession and the Court is minimal and that the basic underlying cultural assumptions expressed in Australian family Law may not apply to the life of the Noongar. Syme (1980) in the Family Court of Australia, reflecting on family law issues for Northern Territory Aboriginals, also suggests that Aboriginals have their own ways of solving family issues.

3. THE IMPACT OF COLONIAL LAW ON NOONGAR FAMILY LIFE

Contemporary Noongar life in the south-west of Western Australia is the product of the influence of over 150 years of foreign settlement on traditional Aboriginal life. Prior to British colonization and settlement at Albany in 1826 and the Swan River Colony in 1829, the south-western portion of Western Australia was occupied by several Aboriginal tribal groups. Noongar (translated: "man" or "person") refers to the languages spoken throughout the area. Today the term is used by south-west Aboriginals to describe themselves, and is often used as a broader term for other Aboriginals who are accepted by them as "one of us". Strictly speaking, however, Aboriginals in each district and community outside the south-west have their own generic term to describe themselves. Over the years the social life of the Noongar has been constrained by definitions and policies of the majority culture.

In the early years of settlement intermarriage of Aboriginal women and white men was officially encouraged, because the European imbalance of the sexes meant a shortage of wives. A European husband was given land by the state if he married an Aboriginal woman (Biskup, 1973:42). Over the next fifty years, the breakdown of many such marriages and the recognition that Western Australia's several thousand full-blood Aboriginals were not dying out and, moreover, part-Aboriginals were increasing rapidly, brought a reversal of policy. Under the Aborigines Act of 1905, it was stipulated that no Aboriginal could marry a non-Aboriginal without permission in writing from the Chief Protector of Aborigines. Further, it was an offence for a non-Aboriginal to live with Aboriginals or to cohabit with them. Part- Aboriginals needed to get permission to marry at all. The definition of Aboriginal was also broadened to include all half-castes and certain adult quadroons. Such legislation was not finally revoked until 1963. Tilbrook 1983:37) notes that while the 1905 Act may have prevented some couples from marrying, it did nothing to discourage casual liaisons, and the protection of women and children was less obvious than the social control elements of the Act.

The 1886 Aborigines Protection Act had already designated the Chief Protector as the official guardian of all native children up to the age of 16, with the right to move them from any place, to reside in any other place. Aboriginal adult reluctance to accept European ways caused the early settlers to turn their concern to the "civilising" of the children through separation from their parents. Some children were also voluntarily left in the care of missionaries. During the nineteenth century, the tendency to place Aboriginal children in institutions grew, particularly as the number of mixed race children increased. Officials regarded the association of these children with their Aboriginal parents and other relatives as undesirable, fearing they would revert to more traditional Aboriginal ways. Legislation in the early decades of the twentieth century reflected this policy to protect and separate many from Aboriginal relatives, in an attempt to assimilate them into European society.

Increasingly the legislation from 1886 was designed to eliminate miscegenation and control the lives of Aboriginal children in particular. These policies on marriage and child care which attempted to assimilate and control the Noongar and define their identity have met with mixed success, for family ties remain strong. Tilbrook (1983:78) notes that even when a marriage did not last, the social links forged by the union persisted. She traces influences which have encouraged Noongar family life to endure. Firstly, the intermarriage of Aborigines from various parts of the State who met in institutions served to keep alive the Aboriginal culture and foster ties with more tradition-oriented areas. Secondly the 1905 Act strongly encouraged the Aboriginals to marry each other, thus assisting in the perpetuation of a distinct group of Noongar families in the south-west. It may be also because of these repressive controls that the Noongar tradition is being strongly asserted today by people affirming their aboriginality with pride.

4. CONTEMPORARY NOONGAR MARRIAGE AND FAMILY LIFE

The description of family formation, dissolution and re-formation which follows relies on preliminary data collected from a pilot sample of ten Aboriginal tertiary students who were interviewed specifically for this study. It also draws on material collected from twenty Aboriginal families whom I have counselled in the Family Court over the last two years. Additionally, I am drawing on informal experience of Aboriginal families collected during three years as a counsellor to some fifty Aboriginal teacher trainees, and on evidence from anthropologists concentrating on contemporary Aboriginal families, namely Barwick (1963) in Melbourne, Gale (1972) in Adelaide, Kitaoji (1976) in northern New South Wales, Hamilton (1981) in Arnhem Land and Tilbrook (1983) and Birdsall (1983) in south-west Western Australia.

(a) Family formation

A Noongar usually contracts a marriage informally at a very young age, often after a child is on the way. Legal marriage is less important to many Noongar, although the influence of Christianity has meant some acceptance of the church wedding. The provisions of the 1905 Aborigines Act that people of mixed descent needed to obtain permission to marry meant that the pattern of simply living together continued to be accepted. Two of the students see the need for a church wedding, while the rest feel civil weddings, or living together in a committed relationship is sufficient. The commitment to each other appears the most important ingredient of the marriage, rather than social pressure, children, or the legal tie. Smith (1962) refers to this as "consensual cohabitation". Often "extra-residential mating" will occur (also Smith, 1962), where each partner retains his/her own home, often with family, but the couple meet on a regular basis. This is not considered to be a "marriage" by the Noongar.

When two Noongar enter a marriage relationship, they do not involve merely themselves, but a wider and intricate kinship network. The "cousins" are multiplied and kin relationships extended vertically and horizontally. All of the students interviewed mention how problems arise in terms of spouse selection because of the elaborate kin network. It is stressed that unlike the situation in the majority Australian culture, the Noongar are not allowed to marry their third cousins, or closer. Clearly, as the Noongar intermarry, the number of kin left available for marriage decreases. Some explain that particularly in the lower south-west this is causing particular problems, and marriages are being contracted in what they consider an incestuous way. It often takes the birth of several children into such a marriage, before it is accepted by the kin group.

When a first marriage relationship is contracted, the couple may live with parents. Both are usually teenaged, and often below the legal marriage age. Property and economic arrangements are not relevant to the new partnership, and its commencement is not deferred for financial reasons. Personal security appears to be defined more in terms of familial relationships and less in terms of residence. As the traditional relationship with the land is often severed, kin seems to have become central to Noongar identity.

If a young girl chooses either not to acknowledge the father of her child, or does not wish for a permanent relationship, there is always a place for her and/or her new child at home. Most Noongar families add cousins or grandchildren to the household as a matter of form. It is common for grandparents to become social parents to a child who calls them "dad" and "mum". Birdsall (1983:55) relates how child-rearing in a Noongar household is a communal enterprise from the very first, with children learning to be looked after by their grandmothers and aunties, in particular, and other relations from time to time. Such flexibility of filiation extends to aunts and cousins, in particular. A Noongar child is taught to regard an aunt as a mother, and her cousins as her sisters and her brothers. The classificatory kinship system apparent in more traditional communities (e.g. Hamilton, 1981:92) is still strongly apparent among the Noongar today. "Granny", for example, refers to any adult of either sex of one's grandparent's generation, who has the status and respected position of a grandparent. Birdsall explains that this communalised method of child-rearing is the very core of Noongar social structure and organisation. It is by this means that an individual forms close and lasting associations that will be of major importance through life.

(b) Family dissolution and re-formation

If a couple cohabit or are married for any length of time, have children, and then separate, the children generally go with the mother. All of the students agree this is the common way of sorting out custody (cf Barwick, (1963:251), who found this among Melbourne Aboriginals). However, some mention how the women talk it over and work it out between them. Women and men informants disagree on this one, each attributing more power in decision-making to the other. It is not clear whether the mother's family is more significant to the child, as mentioned by Birdsall (1983:60), since several also mention the paternal family's influence in custody decisions. The women likely to have influence on custody decisions are grandparents, aunts and the mother of the child, in line with the classificatory system mentioned before. One student mentions that if there are several children it is sometimes considered important to leave one with a grandparent who needs to have a child to care for, although it is stressed that the child is chosen because it will also suit his needs. Experience from other informal sources would suggest that a mother without children loses her 'self', since children define her identity to a large degree.

One of the students mentions how he was brought up by uncles and aunts after his mother left his father, but that his father continued to remain the "custodial" parent from a distance, while working seasonally away from home to support him. It is agreed that fathers do care for children after a separation, but none interviewed appear clear about the dynamics of why this is so. Most agree that there is always someone in the family network who can care for a child if a parent is unable to, because of separation or other reasons. One student had been fostered twenty years ago to a white family. He feels that this occurred because his white father left his Aboriginal mother, and she had no financial resources to look after her children. This is less likely to occur today because of the Supporting Parent's Benefit.

Access to children by the parent who does not live with them appears to vary tremendously, but does not seem to have the problematic nature which often occurs for other Australians. There is one line of thought that once a father has established his child is being cared for well, he can leave her completely, particularly if she is a pre-schooler. In this case two fathers say they let their children grow up with another "father", and only re-entered the children's lives once they were about ten years of age. Others mention feeling able to see their children whenever they wish, but have no regular access arrangement worked out. In fact, the word "access" appears quite foreign to those interviewed. It is as if being a parent does not necessarily involve regular contact, because a child has multiple "parents".

Many mention the power children have to make decisions about where they live, particularly if the adults are undecided. Ten years of age appears a common age for a child to make such a decision, and also to decide on a surname, if the mother remarries. Birdsall (1983:59) mentions that:

> "A Noongar child has the right to live with who she pleases among those of her relations who are deemed 'responsible' by the family".

Kitaoji (1976:VII:29) also mentions children of ten years of age choosing parents from available alternatives, in the northern New South Wales Aboriginal community. The dynamics of a child's decision-making are not clearly explored, but are in line with the relatively permissive child-rearing practices accepted by Aboriginal parents (see Davies and McGlede, 1982).

A mother's new partner is accepted by the child as yet another "relation". A child under about ten years of age may loosen ties with a biological father and assume the new man is "dad". In fact, often a young child may not be told that there is a different biological father, until around the end of primary school. Children up to about ten years tend to call the new person "uncle". This appears a very common terminology for a step-parent. Some students can relate having known a series of "uncles" whom their mother lived with, and who fathered their (step) sister or brother, before leaving to remain an "uncle" of the family forever. It appears the Noongar have the need to give the new family member a kin name to allocate his permanent status within the family.

That dispute over custody and access do occur in Aboriginal society is, however, documented. The Counselling Service in the Family Court of Western Australia sees a small but consistent number of Aboriginal couples. None of the students had knowledge of the Family Court being used to solve disputes over children. The most common examples of dispute over custody appear to involve a longer dispute of historic family feuding, and usually grandparents are involved in some way. For example, a Noongar struggle between two different family lines erupted between paternal grandmother and the child's mother after the couple had lived in the father's parents' home. The paternal grandmother had obviously cared for the child during the history of the marriage of her son and the child's mother. It is possible this kind of dispute occurs because the paternal family is not the normal line of influence among the Noongar, as suggested by Birdsall (1983:60).

Cross-cultural marriages (legal or de facto) between Aboriginal and other Australians commonly sustain lengthy and bitter battles in the Court and in counselling because of the clash of cultural values underlying the Family Law Act, and the customary law of the Aboriginal. Those resolved by the Court commonly advantage the culture by whom and for whom the Act was created.

Whatever else is not yet clear, it is known that when Noongar parents separate there are many potential caregivers for a child, and parents do not have trouble relinquishing natural parenthood to a social parent. A grandmother may, for example, permanently become "mum" for the new grandchild, while her young teenage daughter chooses to remain single. It is also clear that the Noongar can accept multiple parents because of their acceptance of classificatory filiation.

5. CONCLUSION

The previous sections of this paper reveal that the Family Law Act does not meet the cultural integrity of the Noongar, and doubtless other Aboriginal Australians. This is revealed by their reluctance to utilise the resources of the Family Court and by the mismatch of family patterns within the two cultures.

Underlying Australian family law is the importance given to sustaining the child's relationship with his biological parents after they separate. The Noongar do not necessarily conform to this philosophical assumption. It is very likely a natural parent may choose to remain inactive for many years before resuming the parent role when it is seen as important - in adolescence, for example. Where this would seem to be irresponsible behaviour in our culture, a

Noongar may believe it is in the best interests of the child to allow the social parent (step-parent) to take the predominant socializing role. Moreover, the relationship of a child to his natural parents is only part of a complex network of important kin, all of whom are relevant to a child's day to day care. To restrict access to just two biological parents is to deprive a Noongar child of these other "parents" - his grannies, aunts, older cousins etc.

Finally the nuclear family ideology prohibits the co-existence of physical and social parents (Kitaoji, 1976: V11:28). The maintenance of natural and adoptive parents or natural and step parents is considered harmful and problematic, and therefore, the retention of links to the child by both kinds of parents is not reflected in current family law. The Noongar however, do not adhere to exclusive parenthood, but may choose between available alternatives. This runs counter to the Anglo-Saxon belief of "custodial" parent, where it is assumed that one parent best provides daily care. It is relevant to suggest that much of the role conflict experienced by white Australians when entering second marriages with children arises because of an inability to accept that children can have many parents, both natural and social.

Several areas of customary family law among the Noongar remain unclarified, and require further research. These include the precise mechanisms of decision-making over custody when two natural parents are no longer able to remain together, and the extent that the mother's family, and the child herself is given influence over the decision. Investigating traditional guardianship patterns after bereavement may assist in this description. It may also involve gaining further information about the underlying sources of conflict which allow particular custody and access disputes to reach the Family Court, and why this higher authority is sometimes, although rarely, engaged. Further detail of the parenting which occurs after a parent leaves home would also clarify how parent and child perceive the relationship, and what the effects of the disruption, if any, are on the child. It would also be helpful to trace the links between the historic influences on marriage and family living, particularly as they relate to the custody of children.

The preliminary description outlined in this paper has sought to clarify the relevance of Australian family law to the Noongar of the south-west of Western Australia. In so doing it has brought to light some of the discrepancies between Australian family law and the customary law which still remains powerful in prescribing the family and marriage patterns of the Noongar. Further research will provide depth to the analysis and allow its framework to be used by institutions currently working closely with Noongar families. While each Noongar has a particular experience of the mosaic of the majority and Aboriginal Australian cultures, accepting the integrity of the distinct Noongar tradition allows mainstream Australians to respect and value the descendents of the original inhabitants of this country.

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The outcome of defended custody cases: 'Does father have much chance?'

Frank M. Horwill and Sophy Bordow
Family Court of Australia

The question in the title occurs and re-occurs whenever child custody is discussed. To find an objective answer to this question has been a major reason for research on two occasions during the history of the Family Court of Australia. The question is, however, only a part of the general question of what factors do and should influence decisions about the children once a marriage has come to an end.

As is well known, the Family Law Act provides that "The Family Court shall ... have regard to - ...

(c) the need to protect the rights of children and to promote their welfare" (s.43); and

In proceedings with respect to the custody or guardianship of, or access to, a child of a marriage -

(a) the court shall regard the welfare of the child as the paramount consideration; ...

(c) subject to paragraphs (a) and (b), the court may make such order in respect of those matters as it thinks proper. (s.64(1))

In Australia and elsewhere, the child's welfare has often been expressed in terms of "the best interests of the child", but neither this expression nor the word "welfare" is easily and permanently defined. In fact on some aspects opinions differ widely.

As Law Professor R.H. Mnookin says (1975):

> Deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself. Should the judge be primarily concerned with the child's happiness? Or with the child's spiritual and religious training? Should the judge be concerned with the economic 'productivity' of the child when he grows up? Are the primary values of life in warm, interpersonal relationships, or in discipline and self-sacrifice? Is stability and security for a child more desirable than intellectual stimulation? These questions could be elaborated endlessly. And yet, where is the judge to look for the set of values that should inform the choice of what is best for the child? Normally, the custody statutes do not themselves give content or relative weights to the pertinent values. And if the judge looks to society at large, he finds neither a clear consensus as to the best child rearing strategies nor an appropriate hierarchy of ultimate values. (p.260-1)

He later says:

> While judgments about what is best for the child may be currently beyond our capacity in many cases, this need not be true in fifty years. Movement towards better judgments implies, however, that judges and decision-makers as a group learn from the process of decision. In the absence of systematic feedback, this is not likely. (p.290)

In their report "Family Law in Australia" (1980) the Joint Select Committee on the Family Law Act recommended that s.64(1)(b) should read:

> (b) The Court shall take the following matters into account:
>
> (i) the relevant conduct, as parents, of the parents of the child;
>
> (ii) the relevant conduct of any step-parents or persons sharing the care, control and guardianship of the child with the custodian;

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(iii) the wishes of the child's parents or parents as to his custody;

(iv) the wishes of the child;

(v) the desirability of, and the effect of, any change in the present care and control of the child;

(vi) if there is more than one child under consideration, the effect of the separation on the children;

(vii) the education and up-bringing of the child;

(viii) any other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account. (p.59)

The committee only regarded this recommendation as indicating "some guidelines", with the "determination of standards...not (being) an easy matter" and requiring considerable research.

In the history of custody decisions, certain "doctrines" or "presumptions" appear to have dominated over other factors. The maternal preference or "tender years" presumption (Roth, 1977) has been the most notable in the last fifty years, but the principle of maintaining the status quo has also been very strong in practice (see later comments).

The Family Law Act has changed the setting for custody decisions, but implicit in the last sentence is a need to get behind the factors which are most discussed and find out, if possible, what other factors are influential in judicial decision making.

Any decision-making process includes a stage where possible solutions are evaluated in the light of a wide range of factors which might be relevant, including such principles as concerned in s.43 of the Family Law Act.

In the early '70s, V.J. Konecni and E.B. Ebbesen (1979; 1981) of the University of California at San Diego, initiated a long-term research project on legal decision-making. In their study of sentencing adult felons they used "six different data-collection methods including: interview (with San Diego County Superior Court judges as subjects), questionnaire (with judges as subjects), rating-scale responses (with judges, defence attorneys, and college students as subjects), experimental simulation (which used judges, probation officers, and students as subjects...), observation of sentencing hearings (coding of the content of the live sentencing hearings), and archival analysis (coding of court files after the sentence had been passed)." (1979, s.4)

They concluded (with certain provisos as to the methods used) that, in general, archival analysis was likely to be the most trustworthy indicator of the actual causes of the decisions.

In this study, and Horwill's previous one (1979), the main purpose has been to find the proportion of fathers who get custody, but both studies have allowed for some examination of related factors. The number of factors considered has increased in the present study, but the amount of time involved in analysing a file's contents in detail (Konecni & Ebbesen, 1979) led to a restriction of the data gathering to factors which did not involve detailed data collection from all documents.

Since the Family Court began in 1976, six custody outcome studies (Doyle & Caron, 1979; Eekelaar & Clive, 1977; Horwill, 1979; Maidment, 1981; Pearson, Munson & Thoennes, 1982; Weitzman & Dixon, 1979) have been published. Although these six studies were conducted in three different countries - Australia, the United Kingdom and the United States of America - the results were remarkably similar. Horwill (1979) summarised his findings in the earlier study as follows:

> The most common picture of a case was where the wife in a separated couple applies for sole custody of children who are living with her, and is granted custody by consent, whilst the matter of access, whether the father has applied or not, was left to the couple and their advisers to work out.
>
> Fathers got custody in about one case in seven in this sample, but since most cases were decided by actual or tacit consent, it is apparent that this low ratio comes mainly from decisions made by parents and their lawyers outside the courtroom. (Decisions that are presumably based partly on beliefs about children's needs and the capacity of men and women to satisfy them, and partly on beliefs about the likely outcome of a court case, as well as other factors.) (p.39)

Although the percentage of defended cases was small, all the studies found that fathers gained custody of all their children more frequently in defended cases than in uncontested ones. That this has been so in the Family Court of Australia has been widely accepted, but prior to the present study no definite statement of actual proportions has been possible.

The influence of the status quo appeared strong, with the status quo being maintained in from 90% to 99% of cases in the three studies which mentioned it.

The present study

The present study used a random sample of 50 defended custody cases each from the Sydney and Melbourne Registries (a total of 100 cases). To provide some background data, records of all orders made in 1980 by the Court in Melbourne (not circuit visits) were also examined for custody decisions. 1,732 custody orders were found; this does not necessarily represent the number of cases handled, because some cases almost certainly had more than one order during the year. The exact number of defended cases decided in 1980 is unknown, but the 100 cases in the main study were probably approximately half the cases decided in that year.

Like previous studies, the present study is mainly descriptive, but has allowed for some analysis of factors which could have influenced the custody decision. Court files are, of course, a limited source of information on influential factors. They were not designed for research but for other purposes and, in defended cases, usually contain material of a highly partisan nature.

Three main types of data were gathered:

(a) the outcomes and management of the case by the court, including the provision of court counselling assistance;

(b) aspects of the history of the case, especially some of the milestones in the litigation history; and

(c) demographic information on the clients.

Put Tables 1 and 2 about here

Defended custody cases are inevitably not typical of all cases, let alone all marriage breakdowns involving children. This is so because of the "selection" process involved in getting to a defended hearing - a selection process affected by such things as the parents' view of the appropriateness and feasibility of having custody, how their lawyers view the case and its prospects and the advice they give, their ability to pay the financial costs involved and cope with a lengthy time of uncertainty and conflict, and their determination to push their viewpoint as far as possible.

We are able to see some of the effects of this selection process in the differences reported in Tables 1 and 2 between the study sample and all 1980's divorcees and/or the total population, i.e. in father's birthplace, the ages of the children, the parents' involvement in full-time employment, the family socio-economic status and the length of time between the final separation and the filing for dissolution. Details of the differences will be given later. In these and later tables, where there is little likelihood of the pattern of data occurring by chance, the probability of a chance occurrence is reported as being:

*: less than one chance in 20;
**: less than one chance in 100;
***: less than one chance in 1,000.

The history of the cases

This section is concerned with some of the things that occurred during the life-span of the case (that is the period between the final physical separation and the 1980 defended decision; a few parents were still separated under the one roof at the time of the custody decision).

The very noticeable but largely unexplained differences between the history of Melbourne and Sydney cases may also point to ways in which defended cases may not be typical of all cases.

In 55% of cases litigation was still continuing two years after the separation and in 23% it was still continuing four years after - for the Sydney registry it was 72% of the cases two years after and 32% four years later. These lengthy case life-spans were not entirely due, however, to lengthy life-spans of the present court actions (i.e. the periods between the current custody application and the 1980 defended decision), for 52% of court actions were complete within a year and 93%

within two years. Sydney's custody applications came very significantly longer after separation (average 2.2 years) than Melbourne's (average 3.3 months). It is worth noting, however, that about 40% of Melbourne's cases had had further action on the file during the year or so preceding this report, i.e. one to three years after the custody decision which was the subject of this research.

Length of the status quo

The term status quo when applied to custody cases refers to settled arrangements for the care and control of the child(ren), which apply up to a particular point, usually the time at which a judgment is delivered by a judge; this status quo may be years long or as brief as a few weeks. Where the child(ren) have recently moved one or more times, there may have been no opportunity for a status quo to be established.

In view of the number of Sydney's longer case life-spans, it is not surprising that the duration of the status quo was longer in Sydney than in Melbourne.

Overall, 43% of the cases had a status quo duration of two or more years, but in Sydney 58% of cases had such a long duration compared with 28% of Melbourne's; at the other end of the scale, 24% of Melbourne's cases involved short (less than six months) or no status quo compared with 6% of Sydney's.

Concern about getting a divorce

A similar large proportion (about two-thirds) of the sample's spouses and all the 1980 divorcees sought divorce as soon as it was legally available, but unlike the whole 1980 group, very few waited three years or more after separation.

The outcome of the case and related factors

The custodial arrangements

(In this paper where the expressions "custody" or "custodial parent" are used they should be understood to include "care and control" or "the parent who has care and control", unless the context clearly indicates otherwise.)

In 79% of Melbourne's total custody orders the mother gained care and control of all the children (1,218 orders were for sole custody, 146 were joint custody), and in 18% the father gained care and control of all the children (227 sole, 89 joint); in 3% the children were split between parents (31 sole, 16 joint) and in 0.3% of orders there were other arrangements. (Some cases were probably counted more than once because of multiple orders in the one case; until a computer system is installed this is difficult to avoid.) Similar details were not available from the Sydney registry. This result is little different from Horwill's 1979 study mentioned earlier. An observable trend is the increase in the proportion of joint custody orders when father and split care and control orders were made.

In the defended cases study, custody of all children in the family was granted to the mother in 54% of cases (involving 105 children) and to father in 31% (involving 55 children). When split custody decisions are taken into account, care and control of at least one child of the family was granted to the mother in 64% of cases and to the father in 41%. Custody of all children to one or other parent was far more common than splitting the children (in 10% of the cases) or the variety of other possible arrangements (in 5% of the cases). (These last two arrangements involved 37 children.)

Despite the defended nature of the cases, the courts chose to maintain or revert to joint custody in 21% of the cases. There were, however, marked differences between the registries, with Sydney judges making joint custody orders in 32% of their cases and Melbourne judges making such orders in only 10% of their cases.

Living arrangements and the status quo and their effect on decisions

The status quo was maintained in 58% of cases and changed in 36% of cases; in 6% of cases the parents were not yet separated or a status quo situation had not yet been established. As expected, this was much less frequent than the figures reported in previous studies, which showed a 90% or greater maintenance of the status quo. Not surprisingly, whether the status quo was changed or not was related to where the children were living at the time of application: at that stage the father had at least one child in over half the cases (all children in 40%) with about a quarter of the families split between the parents or living in other situations. The mother had at least one child in 48% of cases (all the children in 36%). Between the time of application and the custody decision at least nine sets of children had moved, and in eight of these cases they remained in their new home as a result of the judge's decision.

Of the 36 cases where all the children were with their mother initially, in 67% they all remained with the mother as a result of the custody case, in 22% of cases they all went to their father and in 11% were split between the parents or went to other individuals or institutions. For the 40 cases where all the children were with their father initially, in 48% of cases they remained with their father and in 52% they all went to their mother. In the 12 cases where the children were initially split between the parents, in four they all went to mother, in one to father and in seven continued to be split between the parents or went to other individuals or institutions. For the remaining 12 cases where the parents were not yet physically separated (2 cases) or the children were initially living with individuals other than the parents or in an institution, in five cases they all went to their mother, in three to their father, and in four they remained in other arrangements.

As indicated in Table 2 the mother's involvement in full-time employment was linked with the living arrangements of the children at the time of application, but not in the way expected. The mother not being in full-time employment did not result in her having *all* the children in a greater percentage of cases than where she was in full-time employment. In the former case, there was a greater incidence of the family being split between the parents or in other living arrangements.

The status quo was less likely to be changed if there had been previous custody orders made by the Family Court (only 30% of these were changed). Where there had been no previous custody orders or the only previous orders had been made by other courts, 50% were changed.

The number, sex and ages of the children and their effect on decisions

There were 197 children in the hundred families, an average of two children per family, the same as in the general population and in 1980 divorce cases. Families where one or both parents were not born in Australia were more likely to have only one child than were families where both parents were Australian born. There were no significant relationships between the size of the family and the custody outcome, except that in Melbourne fathers were more likely to get custody of all the children if the family had two or less children.

Both pre-schoolers and 12-17 year olds were under-represented. The Sydney Registry had only about one-third as many pre-schoolers as did Melbourne.

The age distribution was as expected on the basis of Horwill's 1979 research. The Institute of Family Studies (Edgar & Harrison, 1983) report that "Cherlin's (1977) study showed that the presence of pre-school children is a deterrent to separation and divorce", but there is probably also less likelihood of dispute over small children because of a continuing tacit agreement amongst litigants that small children should continue with their mothers. With the older children their wishes become of increasing importance and so tend to preclude prolonged disputes; in some cases, however, the custodial parent disputes the declared wishes of a teenage child and so the case continues through the court.

Put Table 3 about here

Table 3 shows that custody of children in the two lower age groups, i.e. the under-fives and those from 5-8 years old, was granted to mother and father in approximately the same percentages as the total sample.

Both the older age groupings, the 9-11 year olds and 12-17 year olds, showed some difference from the average custody decision. With the older primary schoolers (9-11 years old) only 8% went to "other" custody situations. With the 12-17 year olds only 44% went to the mother with all their siblings; 18% went to the father with all their siblings and 38.5% went to "other" situations - in most of these the family was split between the parents.

The ethnic background of the parents and its effect

Because of the potential for cultural conflict, it could be expected that there would be more contested cases where one or both parents were born outside Australia. This was not evident in Horwill's 1979 study, but does appear in this one, where the sample included only 62% of Australian-born fathers as compared with 71% of 1980's male divorcees. Twentysix per cent of fathers came from non-English-speaking countries as compared with 14% of 1980's male divorcees. Seventythree per cent of mothers were Australian-born and only 14% came from non-English-speaking countries - this does not differ significantly from the 1980 divorce statistics. The data does suggest a somewhat greater incidence of custody battles after a marriage between a man born in a non-English-speaking country and a woman born in an English-speaking one - this is not surprising in view of the fairly long tradition until recently of mother preference in English-speaking countries (Roth, 1977) whilst the tradition in other countries varies.

Families where both parents were Australian-born had proportionately less pre-schoolers (12%) and more late primary schoolers (32%) than the families with other cultural combinations (22% and 16% respectively). It could be that the pattern of applications by fathers was partly responsible - perhaps the Australian "ocker" image reduces the number of fathers' applications for pre-schoolers and increases them for the late primary schoolers; the practicalities of caring for small children and a perceived low likelihood of gaining custody are other possible explanations.

A third area of ethnic background difference was that, at the time of application, children were somewhat less likely to be split between their parents and more likely to be with other individuals or in institutions if one or both parents were born outside Australia. Girls, moreover, were much more likely to be with their mother if one or both parents were born outside Australia.

The ethnic background of the parents certainly seems to have affected the pattern of applications but does not seem to have had much effect, if any, on the outcome.

The socio-economic and employment status of the parents

Socio-economic status was measured by the usual occupation of the parents. The occupations were classified into broad categories, known to be highly correlated with education and earnings and/or likely to be relevant to family characteristics and custody decisions. All persons in professional occupations, whether or not they were self-employed, were included in the professional group; all other persons known to be self-employed were classified elsewhere because of lack of information.

Professional level families were over-represented in the study sample, with 20% of the families having professional fathers compared with 8% of professionals in the whole population. Semi-skilled and unskilled blue-collar workers were, however, under-represented, with 17% in the study sample compared with approximately 27% in the whole population. It seems probable, then, that there is a genuine tendency for professionals to be more likely to contest custody cases - this tendency could be associated with greater affluence, greater acceptance of changing views of men's and women's roles, and/or greater acceptance of the legal system as a way to achieve personal goals.

There was a significant difference in the percentages of parents who were in full-time employment in this sample compared with all families with dependent children in the general population in 1981; the father only was employed full-time in 60% of cases as compared with 74% in the general population. Sydney had considerably more dual-career families and none where the father did not have full-time employment. In contrast, in Melbourne 24% of fathers did not have full-time employment.

The figures suggest that some fathers may fight a custody case because they themselves are unemployed and so available for child care *and/or their ex-wives are employed and so* unavailable for full-time child care.

Put Table 4 about here

The family's socio-economic group, as measured by the father's occupation, is one of the factors affecting the custody outcome (Table 4). No non-professional father identified as self-employed (8 of whom were Australian-born and 6 overseas-born), gained custody of all his children. In this group, the mother gained custody of all the children in 64% of the cases and split custody or other arrangements applied in 36% of the cases. This contrasts with the non-professional employed white-collar group where 42% of fathers gained custody and in only 4% of the cases were there other arrangements. Neither the incidence of full-time employment by the mothers, nor the ethnic background of the parents, nor the age of the children significantly affected this result. The time commitment of running one's own business would seem a likely factor in the self-employed's lack of success, but personality factors and other behaviour are also possibilities.

The involvement of the Court Counselling section

The Family Court Counselling service can be involved with clients either on a reportable basis under ss.62(4), 63(2) or

64(5), or on a non-reportable basis under ss.14-16 and 18, or 62(1-3 and 5). Court counselling assistance under any of the above sections of the Act may involve one or more conferences (or interviews, as counsellors usually call them), and may involve the children, step-parents and other relevant persons as well as the ex-spouses. An individual case can involve assistance under several different sections of the Act on different occasions.

As would have been expected, 94% of cases did receive some counselling assistance, with the case being re-opened under a different section of the Act or by a new court order in at least 52% of the total.

Almost all cases (92%) involved some sort of a report. In 62% of these cases, the custody order clearly paralleled the counsellor's view of the case as given in the report; in 9% it disagreed, and in the other 28% there were points of both agreement and disagreement. A fairly high percentage of concurrence is to be expected, because both court and counsellor are presumably responding to many of the same features in the case. The court, however, in a defended case would usually have more information available to it.

Problems with access

Access can be regarded as part of the custody package, and Horwill's 1979 study looked briefly at several aspects of it. In this study, however, it was only considered as a potential indicator of serious and ongoing conflict between the parents.

Access problems after the custody decision were reported in the file in 27% of the cases. The cases in which access problems were reported later are also the cases where there is a greater tendency for more counselling to occur; since most of the counselling in all the sample's cases was court-ordered, it is apparent that the judges of the court saw these cases as more problematic (with 70% having multiple counselling interventions) than the cases where no later access problems were reported (only 45% of which had multiple counselling interventions). Conversely, only 4% of cases where access problems were later reported received no counselling and 26% received only one intervention, compared with 7% and 48% of those where no later access problems were reported.

There was no significant relationship between the granting of joint custody and the reporting of later access problems, so in itself the granting of joint custody does not seem to diminish or increase later problems.

Conclusion

This study has clearly proved, from a representative sample of defended cases, that it is quite untrue to claim that fathers have little chance of being granted custody of their children by the Family Court of Australia.

What it does not prove, however, is what percentage of all separated and divorced fathers who wished to get custody of their children could expect to do so.

It could be implied from the extended process of defended cases that they are the only ones where the full decision-making powers of the courts are being exerted, and from which definitive conclusions about the practices of the court could be expected. The pecularities of those custody cases which lead to them being fought to the bitter end, however, almost ensures that they cannot be used for this purpose.

This study has found a number of atypical aspects which characterise these defended cases (most are listed in Tables 1 and 2), but apart from the sex of the parent, only the child's age and the occupational group to which the father belongs appear to have influenced the outcome (and this in ways that were not predictable beforehand). There would seem to have been a definite abandonment of presumptions and stereotypes about the right kind of decision and a concentration on the circumstances of the individual case. Some of these circumstances could fairly readily and accurately be extracted from the files e.g. the incidence of illness, psychological disorder and criminal charges.

Apart from the type of matters just mentioned, research in the future could perhaps best concentrate on the "selection" process which leads to cases becoming defended cases, and on the outworkings of the court decisions - their workability and durability and their effects on all the individuals involved.

Note

[1] The paper is a summary of the results with a different introduction, of Horwill, F.M. and Bordow, S. The outcome of defended custody cases in the Family Court of Australia. Sydney: Family Court of Australia, 1983. With slight differences, it appeared in the Law Institute Journal, 1983 (July), 57(7), 673-679.

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TABLE 1

CHARACTERISTICS OF THE CLIENTS COMPARED WITH OTHER REPRESENTATIVE GROUPS

Characteristic[a]	Comparison group(s)	Statistical significance of the difference between groups
Parents' involvement in full-time employment[b]	Melbourne v. Sydney	***
	Married couple families with dependent children present - June 1981	**
Number of children under 18 years[c]	ditto	n.s.[d]
	Both parents Australian born v. other	*
	1980 divorcees	n.s.
Birthplace[e]: Father	ditto	**
Mother	ditto	n.s.
Cultural mixture[f]	ditto	n.s.
Ages of children[g]	Boys, girls and total in 1981 census	***
	Melbourne v. Sydney	*
Youngest or only child[h]	1980 divorcees	***
The socio-economic status of the family, as measured by the father's usual occupation[i]	Males over 15[j] (1981 census)	***

[a] Categories used are given in following footnotes.

[b] Both parents; father only; mother only; neither parent.

[c] One; two; three or more.

[d] No significant difference.

[e] Australia; Africa, Asia, Oceania: Canada, Eire, New Zealand, the United Kingdom or United States of America; Greece; Italy; Yugoslavia; other Eastern European; other Western European; other.

[f] Both parents born in Aust.; one parent born in Canada, Eire, N.Z., the U.K. or the U.S.A., the other in Aust.; one parent born in a non-English-speaking country, the other in Aust.; both parents born in the same overseas country; parents born in different overseas countries.

[g] Under 5 years; 5-8 years; 9-11 years; 12-17 years.

[h] Under 5 years; 5-9; 10-14; 15-17 years.

[i] Professional white collar; skilled white collar; semi-skilled and unskilled white collar; skilled blue collar; semi-skilled and unskilled blue collar; self-employed, other than professional; has no usual occupation.

[j] Excluding those over 65 and under 20 who are unemployed, or not in the labour force or whose occupation is inadequately described or not stated.

TABLE 2

THE HISTORY OF THE CASES

Aspect of the history[a]	Comparison group(s)	Statistical significance of the difference between groups
The life span of the case[b] (i.e. period between separation and 1980 custody decision)	Melbourne v. Sydney	*
The life span of the current court action[c] (i.e. period between current custody application and 1980 custody decision)	ditto	*
Period of time between final physical separation and current custody application[d]	ditto	***
The duration of the status quo[e]	ditto	*
The length of time between the final separation and filing for dissolution[f]	ditto 1980 divorcees	* ***
Children's living arrangements at the time of application[g]	Melbourne v. Sydney Mother does v. does not have full-time employment Both parents are Australian born v. other	* * *

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[a] Categories used are listed in following footnotes.

[b] Not yet separated at time of decision; less than 3 months; 3 but less than 6 months; 6 months but less than 1 year; 1 year but less than 2 years; 2 years; 3 years; 4 years; 5 years or more.

[c] 6 months but less than a year; 1 year but less than 2 years ($\underline{n}$ = 72).

[d] Before physical separation; 3 days or less after separation; more than 3 days but less than 3 months; 3 months but less than 1 year; 1 year but less than 2 years; 2-4 years; 5 years or more.

[e] Not yet separated; no real status quo exists; 1 month but less than 3 months; 3 months but less than 6; 6 months but less than 1 year; 1 year but less than 2 years; 2 or more years.

[f] Less than 1 year; 1 year but less than 2; 2; 3; 4; 5 or more years.

[g] With mother; with father; other.

TABLE 3

COMPARISON OF CUSTODY ARRANGEMENTS MADE FOR THE VARIOUS AGE GROUPS *

Age of child (years)	Custody of all children to:			Total
	Mother	Father	Other [a]	
Under 5	51.6	29.0	19.4	100% (31)
5 - 8	55.1	29.5	15.4	100% (78)
9 - 11	59.2	32.7	8.2	100% (49)
12 - 17	43.6	17.9	38.5	100% (39)
Total	53.3	27.9	18.8	100% (197)

[a] "Other" includes cases where some children went to each parent, or to other individuals or institutions.

TABLE 4

COMPARISON OF CUSTODY ARRANGEMENTS MADE IN EACH SOCIO-ECONOMIC GROUP *

Father's usual occupation	Custody of all children granted to:			Total
	Mother	Father	Other [a]	
Professional	55.0	35.0	10.0	100% (20)
Other white collar	54.2	41.7	4.2	100% (24)
Blue collar and no usual occupation	50.0	33.3	16.7	100% (42)
Self employed	64.3	0	35.7	100% (14)
Total	54	31	15	100% (100)

[a] "Other" includes cases where some children went to each parent, or to other individuals or institutions.

Evaluation of court referred conciliation conferences

S. Bordow, A. Marshall & M. Turner
Family Court of Australia

A novel feature of the Australian Family Law Act (1975) lies in its attempt to apply unprecedented alliances in dealing with the socio-legal problem of divorce. The Social Scientists, as a counsellor, has become an officer of the Court, which in itself, must redefine the more traditional patterns of interaction between the two professions. A working model has thus been established with the opportunity for systematic documentation, comparative analysis of concepts and evaluation of its contribution.

There has been much discussion of the possible implications of the conciliation counselling provision of this law. All available overseas evidence indicates that a conciliation service improves the quality of dispute resolution at the time of divorce. Although the data available have limitations, their strength is that conciliation has been successful under a variety of conditions in several different countries

In Australia, hard data was lacking that might indicate what was happening to couples involved in such conciliation counselling. This study was undertaken to provide such information.

The Development of Concepts and Practice of Conciliation Counselling in the Family Court of Australia

Although Family Court Counsellors may meet various needs for family counselling is is generally the case that couples interested in marriage reconciliation or post-divorce assistance are referred out to other community agencies. Family Court Counsellors in response to the immediately apparent and overwhelming need, developed the speciality of counselling separated parents who are in dispute about custody and access to children.

Professional and practice experience supports the current socio-psychological theories that people will be more committed to a decision made themselves and that the conflict is more apt to being resolved constructively and with less residual hostility within a co-operative framework than within a competitive situation. Also with the advent of systems theory, family professionals have come to understand that the"best interests of the child"usually hinges on the "best interests of the family"

The process of counselling parents in dispute about children has come to be known as conciliation counselling, with the parties to a dispute attending a 'conciliation conference'.

Clients can self refer or be referred for assistance prior to any formal application to the court. If applications are made to the court in relation to disputes about children it is now the case, that with rare exceptions, the parents will be referred to conciliation counselling before the matter proceeds in court.

In the plethora of services which have developed all around the English speaking world which offer an alternative to litigation there is a certain amount of confusion as to terms and definitions used to describe the various kinds of interventions. Conciliation and mediation seem to be used interchangebly in some of the literature which suggests a need for a degree of conceptual and definitional precision in the use of such terms, that will encompass the practice realms of both legal and social professions. The importance of such efforts is not only of significance to the daily practice but constitutes an obvious prerequisite of social scientific research.

Our legal partners have defined conciliation as "a process of formulating proposals of settlement after an investigation of the facts and offer to reconcile opposing contentions, the parties to the dispute being left free to accept or reject the proposals formulated" (Saunders, 1969) - "The fact that the parties are perfectly free to decide whether or not to adopt the proposed terms of settlement distinguishes conciliation from arbitration" (Stark's International Law, 6th Editiion). Conciliation as practiced in the Family Court lies in meaning somewhat in between and to the side of the above definitions. Many therapeutic and organizational considerations have largely determined the current counselling service.

At times, the Court processes, rather than therapeutic considerations, have largely determined that counselling interventions would be severely time limited and would focus on the presenting parental dispute about children. Counsellors had to evolve a new methodology to meet this need for a brief dispute-focused conciliation intervention. The pressure of work, the sorting out of the different functions of the Court Counsellor and the novelty of the new service meant that counsellors had to work within a framework of their own idiosyncratic techniques, value systems and theoretical persuasions.

At the professional practice level, the theories of conflict-resolution and crisis intervention were being systematically integrated into conciliation practice. Crisis intervention theory has been influential in that it is time limited and the role of the intervenor is active and somewhat directional. Such intervention is not built on attachment and transferance but elements of authority based on expertise and competence. The counsellor does not necessarily remain neutral as to some extent 'advice-giving' is restored as a useful technique. The advice in this context is towards helping the disputing parents face the realities of their situation - both in terms of the court's process and the likely effects on both parents and children of continued dispute.

Although amicable settlement is often a goal especially in custody and access disputes, the families involved cannot be said to be "perfectly free to decide whether or not to adopt the proposed terms", for they are coerced to some extent by the length, stress and cost of legal proceedings and by pressure to settle from judges, counsellors and their legal practitioners. Furthermore, the conciliator may, but does not necessarily formulate proposals for settlement.

The counsellors' role, whatever variations in technique and strategy, is to help each of the parents consider the various options or pathways that lie before them and the likely consequences of each of the options.

Undoubtedly, there is pressure to choose a pathway which seems to offer the best opportunity for the child to have significant contact with both parents in a way which minimizes hostility and confusion.

"In the Family Court of Australia, it is also necessary to distinguish conciliation from mediation, the meaning of which implies an intermediary, go-between, or intecessor who conveys messages from one party to the other. Counsellors act in this role on occasions but do not favour its use over a face-to-face meeting of the parties." (Horwill, 1983).

In the context of the above comments, conciliation counselling implies a great variety of methods which lead to Family Law disputes being settled by the couple themselves, working with a third party, and without the need for judicial determination of the issues.

A Model for Conciliation Conference

The constant concern among court counsellors regarding their role in the conciliation process and their goals for conciliation conferences necessitates an ongoing analysis of the actual casework practice in this area.

An early exploratory study of conciliation conferences in the Family Court (Schultz, 1979) set out to explore the following aspects of the conciliation methodology:

1. Court counsellors approaches to a conciliation conference
2. Counsellors goals for such interventions
3. Specific techniques employed in such conferences
4. Administrative context in which a conciliation conference takes place; and
5. The types of problems to be handled in such conferences.

The above study revealed four styles of conciliation conference which can be broadly subdivided into two groups:

1. Those in which the counsellor focuses primarily upon the client's relationships (parent/parent, or parent/child) and attempts to work through these towards resolution of a broad range of issues, and
2. Those in which the counsellor concentrates upon negotiating settlement of a more narrowly limited set of issues.

The above categorization of conciliation efforts distinguishes between the settling of disputes, that is, putting a stop to overt conflict and on the other hand achieving a "resolution" which may be defined as a genuine agreement or harmony. Settlement may include various forms of disengagement, including withdrawal or surrender by one of the parties to the dispute. Resolution on the other hand implies that both parties are truly satisfied with the outcome.

Court counsellors have always recognised and appreciated such distinction while conceding that much work needed to be done to identify the family dynamics and the counselling skills which make the difference between 'settlement' and 'resolution'. The future probably lies in developing the ideas now being explored within the counselling service for a family assessment procedures as a precursor to a choice of mode of intervention.

Before the current study was undertaken it was necessary to re-examine the goals for a conciliatiion conference set out in the earlier research efforts. These were refined in the light of current understanding by the counselling service of Sydney Registry and were declared to be:

1. The parties will demonstrate an increased ability to understand the needs of their children.
2. The parties will accept responsibility for

solving their own custody and/or access dispute by making their own joint decision resulting in an agreement on such issues.

3. The parties will demonstrate an increased ability to communicate effectively with each other.

In addition to the general aims of a conciliation conference, a procedural conference framework was developed by staff consensus to encompass the following series of tasks or phases.

Phase I - Clients are given on introduction to the Family Court and information regarding processes of separation and its effects on parents and children. The option of conciliation as against adversary process is presented to the clients and the confidential nature of the conference is stressed. (Since the completion of the present study, such information is now conveyed in the context of a Group Information Session.)

Phase II - This stage of the conference is concerned with identification and clarification of specific problems and issues. The counsellor attempts to structure the interaction patterns and places the emphasis on problem-solving behaviour and the active involvement of both parents.

Phase III - This phase takes up in discussion the problems and issues identified in the previous stage. The counsellor observes communication patterns, levels of motivation and the different experiences of the parties in relation to the separation process. While providing support, recognition and feedback, the counsellor continues to maintain the problem-solving focus. At this stage parents are often able to work out agreements about custody and/or access arrangements.

Phase IV - The final phase is one in which the counsellor tests and clarifies with the parties any tentative agreements they have formulated, examining with them any residual fears or resentments which may undermine the stability of such decisions.

Probably the most common structure for a conciliation conference at this time in the development of the counselling service is for an intensive "one off" session with both parents, of 1½ to 2 hours duration. This is preceded by a group information meeting. Whether further sessions are held depends largely on the individual counsellors assessment. Some counsellors, recognizing that the "agreement" reached will be in jeopardy without further work will contract then and there with the clients for further sessions. Others contract for further intervention only if and when the "agreement" begins to break down. It is a well established pattern that the clients will re-contact counsellors if after a time, strains develop in the arrangement that has been made. This often occurs when a new factor is introduced into the situation, such as a new partner for one of the parents.

Special Problems in Evaluating Conciliation Counselling

The question of "Who uses the conciliation service, how particular disputes get treated and with results?" is commonly asked whenever conciliation procedures are discussed. The major difficulty arises from the problem of creating some measure of conceptual and definitional precision in the use of the above words. Of particular importance is the task of specifying appropriate and valid criteria for assessing the overall conciliation effectiveness and the specific results of treatment. Furthermore, most of the available evaluation techniques attract their share of methodological and theoretical criticism. The problem of selecting outcome measures in the Family Court conciliation field is further compounded by the disciplinary and professional practice distinctions operating in such determinations.

Simplistically stated the concept of outcome for legal practitioners is measured in winning tangible symbols of success, such as care and control of children or property, through either negotiated or judicial solutions. The social science partner's irritation, to put it mildly, with this approach is understandable. Their outcome criteria encompass such concepts as client self-determination, improved family relationships, reduction of conflict and increased understanding of children's needs.

The final selection of 'success' criteria for the present study was essentially a value choice aimed at reconciling the differences of priority and emphasis between the social science and legal professions. Counsellor's assessment of the conciliation process, client's gains and problem resolution were combined with the measures of agreement rates formally reported to the judiciary and the assessment of compliance with such self-determined agreements or court's orders in terms of further litigation.

In addition to the above considerations, a number of ethnical, administrative and practice limitations called for a major modification of the original study design. One of the many practice questions that needed examination was: do clients who undergo a conciliation conference achieve resolution to a greater extent than clients who do not receive such intervention? The suggestion that contrast or control groups could be created by assigning some cases to a waiting list, as a substitute for treatment denial, was unacceptable to the research approval committee. It was considered unethical and impractical to withhold counselling from any client for any period of time whatsoever.

Next, the proposed "measures of change" test battery had to be reconsidered. Since effective measurement of all the various dimensions of therapeutic changes that may occur through counselling, has yet to be achieved by any social science research, the research designers were faced with a need to administer a large number of standardized tests on the pre and post intervention levels. Following consultation with the counselling staff, it seemed that a test battery of this magnitude would be undesirable. Attempts to administer such a test battery, especially before any counselling contact had been established was thought to be detrimental to building what is often a very tenuous relationship between counsellor and clients.

Additional compromise to the original research design was made in the area of analysis of the actual conciliation strategy process within counselling sessions. Content-analysis of recorded therapy sessions was suggested as the appropriate technique for systematic examination of the content of conciliation procedures. Unfortunately, the concept of 'privileged' information is held closely to the legal heart and as the Act defines such conciliation conferences as confidential, recording of any type was not permitted.

In view of the discussed limits, the potential of offering a definite statement on the effectiveness of conciliation counselling has been reduced to a much simpler descriptive notation of which clients respond to a standard conciliation strategy.

The Study

The purpose of this study was to investigate the effects of court ordered conciliation counselling upon the presenting legal disputes concerning children. Under Section 62(1) of the Family Law Act a court may order, in contested custody or access proceedings, the parties to the proceedings "to attend a conference with a welfare officer (Family Court Counsellor) to discuss the welfare of the child, to endeavour to resolve those differences."

Although there may be little differences in the way counsellors approach self-referred and court referred parental disputes about children, court referred conferences only were used in this study, as the formalizing of the dispute by application to court introduces new dimensions to the dispute.

Three major questions were asked in this study. The first dealt with the pre-counselling assessment of the socio-psychological profile of our clients and their presenting needs. The second question dealt with the effects, if any, of counselling intervention. Process characteristics were noted in order to determine the conditions which lead to successful conference outcomes. The final question focussed on the durability and workability of reached agreements as measured by relitigation behaviour at 12 months follow-up period.

1. Study Sample

Formal data gathering began in November 1980 and ended in March 1981. The 12 months follow-up of court files took place in 1982. Data collection continued until the sample reached 70 cases where both partners participated in the research and all data collection instruments were completed. During the period of data collection, approximately 140 conciliation conferences were processed by the Sydney Registry Counselling Service which raises some questions about the representativeness of the study sample. It should be noted that participation in the study was to some degree voluntary and that incomplete cases (one partner only) were excluded. Although special consideration was given to designing client questionnaires by pre-testing them on a sizeable number of clients (pilot study) it is still possible that for some clients the questionnaires might have proved too difficult and presented extra problems for those with Non-English speaking background.

The above methodological concerns were largely mitigated by the subsequent discovery that other chance factors were responsible for most of the exclusions. Periodic shortages of data collection forms were not reported and frequent surges in the service's workload coupled with the pressure of handling priority cases prevented systematic data collection.

2. Instruments

The first phase of the study involved collection of client's baseline data. Client questionnaires filled prior to each conference provided comprehensive information on the following areas:

1. Demographic and psycho-social profiles.
2. Separation background and litigation history.
3. Type and scope of presenting problems.
4. Client's expectations and motivations to negotiate.

The second stage required the counsellor to fill a termination and assessment questionnaire upon completion of each case. The counsellors were asked to comment on:

1. The range and scope of issues dealt with in the conference.
2. The degree of resolution of the presenting problems.

3. The communication patterns between the couple.
4. Client's understanding of children's needs and separation issues.

The above instruments, although primarily designed for research purposes, were intended to be of some clinical use to both the client and the counsellor. In relation to clients, the form was intended to help them express their views and clarify relevant issues. The counsellors used such client feedback to provide them with a ready profile of the client's perceived problems, the areas of dispute and the parties' perceptions of each other. It was assumed that, once armed with such client summary information, the counsellor will not be required to dwell on issues of fact to the same extent as previously, and will be more free to devote his/her time and energy toward the conciliation of the dispute.

RESULTS

1. Demographic Profile

The baseline client data provided the basis for constructing a capsule picture of the "typical" conciliation conference couple seen by Sydney Registry Counselling Service. The typical couple appeared to have the following characteristics. The couple would be Australian born, between 30-39 years of age and ending their first marriage. Majority of husbands were employed in white collar occupations which places them in a higher socio-economic status. The couple had two children aged between 5 and 11 years.

One of the commonly held speculations which require empirical examination is one suggesting that Court Counselling clients are in some ways different from the divorce population in general. By definition they are, as they present with custody and/or access conflicts. Apart from this obvious distinction, the study sample suggests that conciliation conference clients are found to be significantly different in terms of the duration of marriage and children's age distribution, being over-represented in the 10-14 years length of marriage category and the number of children of primary school age.

Both of the above departures were as expected on the basis of practice experience. It is not surprising that both pre-schoolers and 12-17 year old children are under-represented in terms of custody/ access disputes as very young children are often left in the care of their mothers with the wishes of the older children being given increasing importance in such determinations.

While quite a wide range of father's work occupation was recorded, the study sample was significantly over-represented in the professional and skilled white collar categories. However, the commonly held assumption that counselling is a middle class service cannot operate in this instance since conference participation was not voluntary. Thus other factors had to account for this over-representation. To some extent this high incidence of white collar occupations confirms the expectations that the Sydney Registry because of its location would tend to deal with clients of higher socio-economic status than the Parramatta Registry, for example. The data could also suggest that professional and white collar fathers are more likely to contest the care and control of their children. Such a trend finds support in other studies of defended custody cases (Horwill and Bordow, 1983) and could be associated with greater awareness of legal options, greater affluence and greater acceptance of changing view's about mens' roles.

(Table 1 about here)

Information on cultural background and the potential effects of culture conflict within marriage is of particular interest to the ongoing debate on migrant divorces and the utilization of legal and counselling services by such population. The study sample did not have a significantly different distribution of migrant clients from the general divorce population. The observed marginal differences in the incidence of cross-cultural marriages must be treated with caution as the absolute numbers in such categories were too small to make satisfactory inferences.

(Table 2 and 3 about here)

2. Client's Perceptions of Presenting Problems and the Conciliation Process

Even the most basic work of mapping the types of presenting disputes is by definition going to refer to the question of what constitutes a dispute and on what basis are we to distinguish between types of disputes. Our legal partners have reduced this issue to a simple classification based on the substance of the court orders sought in the area of custody, access, property and marital dissolution. Furthermore, they assume the dispute as pre-existant and in need of application of formal rules. Counsellors' approach to such 'presenting' problems is understandably different. As clinical practitioners, they relate such disputes to the web of social relationships from which the disputing parties are drawn and to which they must return. A meaningful clarification for them, has to be cast in terms of marital interactions, unresolved separation, parent-child relationships, family systems, just to mention a few.

Two sets of problem measures were used. The first contained a detailed list of issues covering such content areas as parent-child relationships, personal and interpersonal problems, financial problems, extended family and new relationships problems. The second set of measures was designed to reflect some of the detail characteristics of access disputes.

(Table 4 about here)

Looking at the types of complaints mentioned in Table 4, it seems that fathers are significantly more likely to make complaints about access difficulties, absence of children, child-rearing input and children's relationships with spouse's new partner. The most obvious explanation for these complaints lies in the pattern of children's living arrangements at the time of counselling. In the majority (71.4%) of cases mother had the daily care and control of all children, the father had all children in 18.6% of the families with 10% of the families split between the parents.

In addition to the parental concerns, fathers were also more likely to complain about the adjustment to separation. Complaints about "difficulty with understanding reason for separation", "feeling of having lost everything" and "feeling guilty about what has happened" are all expressions of inability to come to terms with the failure of a marriage. These findings are consistent with the relatively high (22.9%) reconciliation need expressed by fathers in the study sample. Only 1.4% of mothers desired reconciliation.

Emotional and physical abuse coupled with lack of financial support were the most frequent complaints by the sample mothers. Problems with children also ranked highly as most of the mothers had the daily care and control responsibility for children. Although the women were much more likely to leave an 'unbearable' marriage (2:1 ratio), these findsings suggest that they continue to be exposed to high levels of emotional and physical abuse even after a considerable period of separation.

The range of access problems and the observed sex difference in types of access complaints are reported in Table 5.

(Table 5 about here)

Not suprizingly the issue of frequency and duration of contact with the 'absent' parent dominates the problem list. The observed sex differences in types of access problems are largely a function of the respondents care and control status. Fathers are significantly more likely to express the need for a more frequent and longer lasting visitation arrangements. Mothers, as the care and control parents, are significantly more likely to focus on children's reactions and behaviour to such arrangements.

Apart from describing the presenting problems, the clients were asked to comment on their expectations of conference outcome, the potential Court's decision if conference fails to resolve their differences and the necessary conditions for reaching agreement.

Only a small proportion of couples (8.1%) believed that intervention by a neutral third party or more communication opportunities will help to resolve the dispute. Vast majority (70.9%) of respondents saw the potential for resolution vested in the other partner's "willingness to give in" or "become more reasonable". Such attitude is not unexpected among involuntary clients. However, once faced with the impending conciliation conference only about a third (32.9%) of the couples felt that the conference will fail to settle their differences. Mothers expressed greater confidence than fathers in the success of such conferences, suggesting a possible greater commitment to the counselling process among women. Mothers were also more confidence of a Court decision in their favour if conciliation fails. This may be because mothers tend to have possession of the children at the time of the conference or because they accept the commonly-held belief that Courts favour the mother.

3. Outcome of Conciliation Conferences and Factors Influencing Agreement Rate

A number of outcome measures were used to reflect the effectiveness of clinical intervention and the goals of the service. Examination of the "Memo to Judges" which follow a conciliation conference provided an important assessment of the level of agreement reached at the conference. The rate of recorded agreement stood at 75.4%. Translated into practical terms, this meant that, following conciliation counselling the vast majority of clients do not require a judicial determination and go on to generate consent orders. Those who tried but failed to produce an agreement (24.6%) turn to the Court for a solution.

While the achievement of an agreement is an important first step in avoiding protracted litigation, any claims of success must necessarily include consideration of the workability and stability of the conciliated agreements. What proportions of agreements stand the test of time?

Relitigation rates measured at one year follow-up were used to test agreement durability although it was appreciated that such crude measure does not take into account the agreements which may have broken down but were not taken back to Court because of lack of finances, dissatisfaction with the Court's system or other family circumstances. Lack of resources prevented a large scale follow-up of clients to assess their perceptions of change and how long it lasted.

(Figure 1 about here)

A finding of considerable significance is that none of the successful conciliation clients had engaged in relitigation within the follow-up period. By contrast, a majority (57%) of those who failed to produce an agreement and required judicial intervention returned to Court with fresh applications concerning the original dispute. This fairly high 'relapse' rate suggests an element of intractability by some Court clients.

The recorded agreement and relitigation rates are in line with other research on conciliation reported in the general body of literature. Direct comparison are not easy because of the different conciliation and legal systems operating in those countries. The most that can be said is that the reported conciliation/ mediation agreement rates range between 65-80% of cases

(Irving, 1981; Pearson, 1982; McEwen, 1981). The present study agreement rate of 75.4% falls squarely in the range reported in the overseas literature. Furthermore our findings on relitigation rates are also consistent with overseas patterns which suggest that conciliated settlements are complied with to a much greater degree than those achieved through adversarial means. The overseas findings place the relitigation rates for conciliated clients between 1-10% of cases.

Although an agreement represents the most obvious form of 'success' a more important objective of conciliation counselling is to help individuals become aware of their behaviour and its consequences and to improve poor communication patterns. Counsellors' ratings of such outcomes indicated an improvement in communication in 70.5% of couples and a correspondingly significant increase (67.6%) in the parties' knowledge and understanding of children's needs. Such findings suggest that a conciliation conference usually attains other important goals besides reaching agreement.

A number of factors expected to have some bearing on the conciliation outcome were examined in terms of their possible association or influence on the agreement rates.

A majority of counsellors reported that agreement was especially difficult among client couples in which one or both spouses remained emotionally attached to each other. Such couples were frequently characterized by one spouse being 'stuck' and 'unresolved' in their intrapsychic adjustment to separation.

(Table 6 about here)

Counsellor's clinical assessments are in agreement with the high incidence of personal adjustment problems reported by clients in Table 4. Large number of husbands were still coming to terms with and rehearsing their "accounts" of the marital breakup. Their need for reconciliation reflected a heavy investment in continuation of the relationship while the wives were equally determined to end the marriage.

The relationship between the nature of the dispute and the observed agreement rates represents another interesting finding. It appears that counsellors have a greater success effecting agreement over access than over custody.

(Table 7 about here)

This may simply be due to the fact that access is an "easier" issue than custody because it allows for a much greater range of options and consequently a greater scope for compromise and agreement. Nevertheless, a greater range of variables may be operating and these should be subject to additional investigation.

On a more encouraging note was the finding that the agreement rate increases for couples with shorter duration of separation. Almost half (41.5%) of the client couples presented within the first year of separation. These results show the importance of early intervention in marital conflicts and the need to educate people to seek help at the initial stages of their disputes.

Additional detailed investigation of the 'unsuccessful' client's files revealed some interesting features. Large proportion of such cases contained some elements of intractability as expressed by:

(a) protracted court proceedings in the area of property or injunctions;

(b) previous unsuccessful contacts with the counselling service, and

(c) relatively high incidence of mental health problems which does tie up with the concept of "personality unresponsive to counselling" noted by counsellors in their assessment of the case.

CONCLUSION

The high success rate recorded by the study is encouraging but far from definitive. The diagnostic-descriptive design used cannot provide final answers to the basic question of why some clients do and others do not reach an agreement or permit one to draw extensive inferences concerning statistically significant relationships.

Most of the data, nonetheless, supports the hypothesis that conciliation produces lasting differences among disputing couples and that such gains cannot be easily challenged by rival explanations.

It cannot be said that the study clients were self-selected, intrinsically co-operative and held high expectations towards conciliation. On the contrary, all clients were "coerced" into conciliation conference by a judicial order with only a small percentage (6.1%) of couples believing that intervention by a neutral party will help to resolve the dispute.

It cannot be argued that difficult disputes were omitted from conciliation referrals as our data indicates that this is not the case. The finding that 80.5% of couples reported and scored as serious seven or more problems between them provides some indication of the complexity of most disputes. Another indication of the complexity relates to access issues, where 94% of couples reported more than two specific problem areas and 62% reported more than five access problems. Yet, as mentioned earlier, counsellors appear to be particularly effective in resolving access disputes.

While conciliation counselling represents one way to end a war, it is apparent that not all families possess the resources and motivation necessary to resolve their disputes in this manner. Additional efforts are needed to enhance our understanding of such families and examine the conciliation techniques associated with "unsuccessful" outcomes.

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TABLE 1 : OCCUPATIONAL DISTRIBUTIONS

Occupation Categories	Percentage Husbands N=70	Percentage Wives N=70
Professional White Collar	24.3	8.6
Skilled White Collar	21.4	10.0
Semi-skilled & Unskilled White Collar	8.6	18.6
Skilled Blue Collar	15.7	-
Semi-skilled & Unskilled Blue Collar	18.6	5.7
Others (Rural armed services)	7.1	-
Home Duties	-	54.3
Unemployed/Pensioners	4.3	2.9
TOTAL	100%	100%

TABLE 2 : COUPLE'S COUNTRY OF BIRTH

Country of Birth	Study Sample N=70		Divorce Statistics 1980	
	Males	Females	Males	Females
Australia	67.1	75.7	71.4	75.8
Africa, Asia Oceania	5.7	2.9	3.2	3.0
Canada, Eire, NZ, UK or USA	15.7	10.0	14.9	13.2
Greece	1.4	1.4	0.8	0.6
Italy	1.4	2.9	1.3	0.8
Yugoslavia	2.9	1.4	1.2	1.0
Other Eastern European	1.4	-	1.8	1.2
Other Western European	4.3	5.7	4.8	3.8
Other	-	-	0.6	0.7
TOTAL	100%	100%	100%	100%

TABLE 3 : CULTURAL MIX OF MARRIAGE

Categories of Cultural Background	Percentage of Cases N=70	Divorce Statistics 1980
1 Both Parents born in Australia	58.6	63.2
2 One Parent born in Eire, Canada, N.Z., U.K. or U.S.A, the other born in Australia	15.7	12,2
3 One Parent born in an overseas country other than mentioned in 2, the other in Australia	11.4	8.6
4 Both Parents born in the same overseas country.	10.0	11.1
5 Both Parents born in different overseas country.	4.3	4.9
Total	100%	100%

TABLE: 4 RECENT PROBLEMS REPORTED BY COUPLES

.Type of Problems	% FATHERS	% MOTHERS
Custody Dispute	58.5	50.0
Spouse does things to hurt me	43.1	45.5
Absence of Children	43.1	19.7
Access Dispute	43.1	31.8
Feeling of having lost everything	36.9	10.6
Arguments with spouse re child rearing	35.4	19.7
Spouse tries to get children to take her side	33.8	34.8
Emotional abuse from spouse	33.8	60.6
Children's relationship with spouse's new partner	26.2	15.2
Problems with family interference	24.6	18.2
Property dispute	24.6	21.2
Difficulty understanding reason for separation	21.5	12.1
Feeling guilty about what has happened	20.0	12.1
Spouse's drinking/drug use	18.5	28.2
Loneliness	16.9	12.1
Problems with children	15.4	27.3
Difficulty in coping with the whole situation	13.8	13.6
Sleepless nights	13.8	21.2
Sexual relationships	13.8	12.1
Spouse leads immoral life	12.3	4.5
Money management	12.3	19.7
Shortage of income to cover expenses	12.3	21.2
Loss of contact with friends/family	9.2	7.6
My own drinking/drug abuse	9.2	3.0
Physical abuse from wife/husband	7.7	30.3
Inadequate housing	6.2	6.1
Getting financial support from spouse	3.1	40.9
Physical health	1.5	6.1
No adequate day care for children	-	-

TABLE 5: ACCESS PROBLEMS REPORTED BY COUPLES - N=50

Access Problem Areas	Percentage of Cases Fathers	Percentate of Cases Mothers
Spouse does not allow access	52.0	12.0
Frequency of access	44.0	42.0
Duration of access	42.0	30.0
Holiday access	31.0	24.0
Overnight access	25.0	32.0
Presence of someone other than access parent during visits	20.0	22.0
Children often not available for access	16.0	16.0
Children upset because of access	16.0	38.0
Transportation	14.0	14.0
Pick up and/or drop off times	10.0	28.0
Children refuse to go on access	10.0	28.0
Spouse does not turn up for access	8.0	20.0
Spouse will not take access	6.0	12.0
Children's activities while on access	6.0	28.0

FIGURE 1 : OUTCOME OF CONCILIATION CONFERENCES

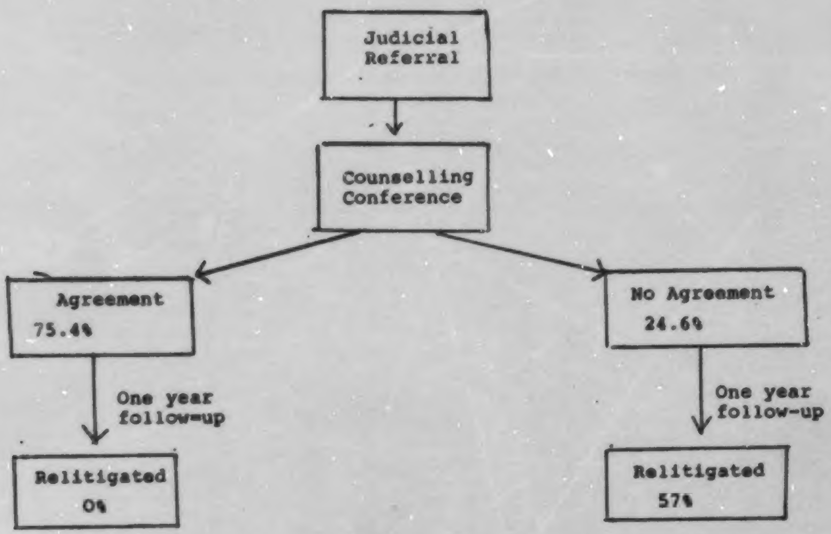
Judicial Referral
Counselling Conference
Agreement
75.4%
No Agreement
24.6%
One year follow-up
One year follow-up
Relitigated
0%
Relitigated
57%

TABLE 6 : COUNSELLOR'S ASSESSMENT OF FACTORS INFLUENCING CONFERENCE OUTCOME

Order of Importance	Relevant Factors
Most Important	Parties in early separation crisis One party in early separation crisis One party 'stuck' and unresolved Intrapsychic adjustment to new role
Next Most Important	High level of resolution except that one party regresses to the unresolved pattern when in contact with each other. Serious allegations that parent's behaviour places child at risk.
Next Most Important	The interdependancy of custody/ access issues and property/ maintenance issues. Relationships within separated families. Economic Factors
Least Important	Parties do not want to make mutual decisions - need the court to decide.

TABLE 7 : PROBLEM RESOLUTION RATES - COUNSELLOR'S ASSESSMENT

Type of Resolution	Percentage of Cases CUSTODY (N=35*)	Percentage of Cases ACCESS (N=50*)
No Resolution	34.3	10.0
Partial Resolution	25.7	10.0
Complete Resolution	40.0	80.0
TOTAL	100%	100%

Severe conflict in matrimonial proceedings

Gianfranco Urlini
Family Court of Australia

Introduction

Until the early seventies, the study of spousal violence was a neglected area of social research. It was following the publication in England of Scream Quietly or the Neighbours Will Hear by Pizzey (1974) plus other publications by Goode (1971), Gelles (1972), and Stinmetz and Straus (1974) in the U.S., that this subject began to receive extensive attention both as a social problem and as a form of human behaviour warranting social research. Following the publication of Pizzey's book, a Parliamentary Select Committee on Violence in Marriage (1974-5) was established. Similarly in the U.S. official recognition was given to the study of this problem by various state departments, for example, the U.S. Department of Justice, the Centre for Women Policy Studies, the U.S. Department of Corrections, the U.S. Department of Labour and also by the setting up of the Family Violence Research Programme at University of New Hampshire.

In comparison with the U.K. and the U.S., Australia lagged somewhat behind with interest in this subject being shown only towards the end of the seventies. With the exception of child abuse, professional journal articles focussed primarily on the legal aspects of assault and physical violence. Articles by Finlay (1978), Lovejoy and Steel (1978) and Scutt (1979) looked at legal remedies as ways of protecting the battered spouse. However the emergence of the feminist movement in the late sixties and early seventies plus the growth in the number of women's refuges combined have played a major and very verbal role in increasing our awareness of violence in the family as a social problem. In Australia there followed a number of initiatives, publications and projects to further study domestic violence, for example, the Royal Commission on Human Relationships and the Womens Co-ordination Unit of the Premiers Department of New South Wales published a report of New South Wales Task Force on Domestic Violence (1981), in South Australia the Womens Information Switchboard and the Adelaide Womens Community Health Centre published Aspects of Violence in the Immigrant Family (1981), and the Department of the Premier, Victoria in co-operation with the Office of Womens Affairs conducted a survey of domestic violence through a phone-in (1981). Recently a number of new books have been published e.g. Family Violence in Australia by O'Donnell and Craney (1982), and Even in the Best of Homes by Scutt (1983) will recently have arrived in our bookshops. In South Australia David Wehner is running a pilot project on group therapy for men violent towards their mate at the Clovelly Park Community Health Centre.

Given the above it seems fair to say that we are gradually catching up to the United Kingdom, the United States and other countries in that this increasing interest in the subject hopefully indicates an acknowledgment that domestic violence is not only a serious social problem but also one worthy of study and hopefully remedy.

The Setting

For the purpose of this study, domestic violence refers exclusively to physical violence between a husband and a wife, that is two people who either are or were married to each other. Physical violence will be defined as "an act carried out with the intention of, or perceived as having the intention of, physically hurting another person", (Gelles and Straus, 1979:554). As such a definition can also extend to slapping a child for misbehaving, physical violence will also include the notion of the "illegitimate use of physical force". (Goode 1971:624-36) The notion of legitimacy is important because the kind of violent acts to be studied lack legitimacy.

The setting of the study is the Family Court of Australia, (F.C.A.) Melbourne Registry. The Family Law Act 1975 has jurisdiction only over those couples who are or have been legally married. Couples can approach the F.C.A. for a dissolution of the marriage, a determination on the question of custody and access of the children of the marriage, the division of matrimonial property or orders for the payment of maintenance. Currently the F.C.A. has no jurisdiction over de facto marriages and people in such situations must have recourse to the Supreme Court for a determination of the above matters. The Family Law Act provides, inter alia,for the establishment of Counselling Service as an integral part of the organisational structure of the F.C.A. in all its Registries.

The Research Problem

Interest in the problem of physical violence stems from the frequent occurrence of violent incidents in the F.C.A.'s client population. Most of the Counsellors of the Melbourne Registry of the F.C.A. would have had direct involvement with at least one if not more such incidents during the course of their employment. The writer has worked as a Court Counsellor for six years and during this time many instances of physical violence have been reported by couples receiving counselling and some have been witnessed personally.

The injunction is a legal tool frequently used as a means of preventing someone from doing something. (e.g. Mrs X is restrained from selling the matrimonial home, Mr. Y is restrained from taking the children out of the State, or Mr. Z. is restrained from harrassing, threatening, molesting or assaulting Mrs. Z) There is a paucity of information on the incidence of domestic violence in Australia. However some figures are available. In a sample of 98 files selected sequentially from the Records Section of the Melbourne Registry, injunctions had been granted in approximately 10% of these cases. Although some orders were for non-violence related injunctions, a number of orders were for personal protection injunctions which leads one to believe that physical violence does occur in at least 5% of the sample. It is reported that "A search of the records of an inner city Legal Aid Centre found that of a total of 3,486 cases handled over a 17 month period, 680 (19.5%) were concerned with domestic matters. Of these 680 cases 150 (22.%)

In their study of domestic violence, they selected a sample of 140 women who had been assaulted. They found that "43 (30%) had not approached any institution for help prior to leaving the relationship. 11 had contacted Legal Aid Centres, and 4 a Womens' Health Centre". (O'Donnell and Saville, 1980: 82) If, for example, the 11 women had gone to the inner city Legal Aid Centre, one wonders what the other 134 women did to obtain legal advice. Even taking into account such factors as not all the women being concentrated near the inner city area it still means many women are falling out of the "net".

Another indicator for the extent of domestic violence is the increase in the number of womens refuges plus the increasing demand for accommodation being placed on these shelters. "In New South Wales, for the year 1980, 11,000 women and children were housed in 33 shelters. 3,000 women and children could not be accommodated. In South Australia during the last 6 months of 1981, 967 women and 1,310 children were housed by the 10 reporting shelters. Within the Adelaide Metropolitan area only, data obtained from the 4 of 8 shelters for July 1981 to June 1982 showed 569 women housed; 61% of them were the victims of battering." (Wehner, 1982: 22)

It seems reasonable to assume, in view of these figures, that violence does occur to a considerable extent and even though it may not be the norm that all spouses behave violently towards each other, domestic violence is not as uncommon as people may like to think.

In an article on problems facing the F.C.A., the National Times quoted the Chief Judge of the Family Court, the Honourable Justice Evatt, as saying "The very nature of the decisions it has to make inevitably give rise to strong and occasionally violent reactions." (The National Times, 29.11.81) Given the emotional distress which often accompanies a separation, the stakes involved whether these be children, property or pride, and the power struggle which is acted out through the legal litigation, the setting is ripe for an outburst of feelings which can be sometimes expressed verbally or physically.

Physical violence may originate between two people. Not only does it affect these two individuals but the repercussions of their actions, either wittingly or unwittingly, involve and affect other persons such as children, family and friends who are also part of that particular system. It often happens that children are witnesses to the abuse. Children may then use this form of behaviour as a role model to be emulated later as a way of resolving conflict. Besides emotional costs which cannot be measured, domestic violence costs the community financially. "In the U.S. it is estimated that abuse-related absenteeism results in a loss to the country of 3.5 million dollars U.S. plus another 100 million dollars U.S. spent each year for treatment of injuries." (Wehner 1982:5) There are a number of questions which need answering in relation to domestic violence such as what leads people to behave in a physically violent manner, what is the significance of violence, and what strategies need to be developed for managing, containing or treating it.

Theories of Domestic Violence

Physical violence can be studied from a number of theoretical perspectives. In their article Gelles and Straus (1979) list 15 such theories. This number becomes 16 if we include the feminist explanation for the occurrence of domestic violence, that is that "domestic violence is closely linked to the structural inequality built into male and female roles in our society". (O'Donnell and Saville, 1980:79)

For the purpose of this study three major theories have been selected. These are:

I. Social Learning Theory

II. Structural Theory

III. Self Attitude/Resource Theory

These theories have been selected because they appear to focus on three different aspects of the person's life. Social learning theory takes into account the influences which impinge on a person's upbringing thus perhaps predisposing that person to later manifestations of violence. A structural theory of violence explains it as stemming from that person's position and interaction with the surrounding society. Finally self-attitude/resource theories may account for violence as a way of enabling that person to maintain his self-integrity or it may function as a coping mechanism. The final reason for choosing these theories is the fore knowledge that it will be possible to test for the presence of those variables generated from the theories in the Court files to be analysed and later in the sample of subjects to be interviewed.

Two minor theories have also been chosen for testing as possible explainers of domestic violence. These are:

I. Psychopathology Theory

II. Alcohol and Drug Abuse Theory

These theories are included because one frequently encounters this kind of violence in those clients presenting to the Counselling Section of the F.C.A.

Social Learning Theory

At its simplest, social learning theory explains violence in terms of it being a learned form of behaviour "violence (here) is viewed as a product of a successful learning situation which provides the indivudual with the knowledge about the response (violence) and what stimuli are to be followed by the response (when is violence appropriate)". (Gelles and Straus, 1979:562) The main exponents of this theory are Bandura (1973), Owens and Straus (1975) and Singer (1971). Accordingly, if a person has grown up in a family wherein there is violence, that person may draw from his learned role models and later apply them himself in similar situations. This theory would predict violence in marriages of individuals from families where assaultive behaviour was observed and positively reinforced. The content analysis schedule and the questionnaire will seek to determine whether or not the subjects were exposed to violence within their own families when they were children or whether they had been assaulted by another man in a previous adult relationship. This may also establish the victim's predis-position to violence as has been suggested by Price and Armstrong (1978). Learning theory seems to have relevance to the subjects in the sample because it does draw attention to their past experiences and on how the processes of socialisation have led to the formation of certain attitudes on violence.

Structural Theory of Violence

This theory explains the occurrence of domestic violence in terms of structural inequalities in that "violence is a function of two major conditions. First, violence is an adaptational response to structured stress. Structured stress produces frustration, which is often followed by violence (expressive violence). The second major precondition for violence is socialisation experience. If an individual learns that violence is an appropriate behaviour when one is frustrated or angry, punishing his children, or arguing with his wife, then often this will be the adaptation of the stress deployed". (Gelles 1972: 185) Here Gelles seems to be combining social structure and social learning theories.

The assumption behind this theory is that violence is more commonly found from among those occupying lower socio-economic positions. Such people suffer great deprivations, frustrations and stress which are responded to with violence. This reaction is institutionalised through differential socialisations which leads those reared in different segments of society to use different modes of dealing with stress and frustration". (Gelles and Straus 1979:566). If this theory is correct, subjects in this sample who are the holders of unskilled jobs or who are unemployed would have more frustrations to deal with and the stress resulting from this might be responded to with greater or more frequent instances of physical violence.

Whilst it is widely accepted that "domestic violence knows no class, or cultural barriers", (Report of the New South Wales Task Force on Domestic Violence, 1981:34), the findings of O'Donnell and Saville (1980) lend support to the popular notion that violence occurs more among those occupying lower socio-economic positions. In his study of 80 families, Gelles found that "violence is more likely to occur in families located on the lower rungs of the social ladder". (Gelles, 1972:188 The extent to which this is true will be tested in the sample used in this study. There is a common belief amongst welfare professionals, supported by the literature on violence, that the socially isolated family with its limited networks and support systems, will be more prone to domestic violence. "Violent families are characterized by isolation from their neighbours. This seemed to leave them cut off from social resources. The lack of social support may contribute to an escalation of family problems, stresses, conflict and ultimately to violence". (Gelles, 1972:185) It is expected that the degree of social isolation or conversely an extensive support network will have a direct bearing on the occurrence of physical violence.

Other exponents of the structural theory of violence are Merton Durkheim (1951), Coser (1967), Stinmetz and Strauss (1974) and Dobash and Dobash (1979).

Self-Attitude and Resource Theory of Violence

According to self-attitude theory "violence occurs when the individual struggles to cope with negative self-attitudes which arise out of devaluating psychosocial experiences". (Gelles and Strauss, (1979:562) Individuals lacking self esteem are prone to adopting deviant (violent) forms of behaviour "as means of receiving attention from others and achieving a positive self-attitude". (Gelles and Strauss (1979:567) According to resource theory, violence is used when other resources are insufficient or lacking. Thus, a husband who wants to be the dominant person in his family, but has little education and a job which is low in prestige and income and lacks interpersonal skills may have to resort to violence to maintain a dominant position". (Gelles and Strauss (1979:567) Exponents of these theories are Kaplan (1972), Goode (1971) and O'Brien (1971).

Like all other units or systems, the family is a power system. All rest to some degree on force or its threat". (Goode (1971:26) Without going into the analysis of why he believes this to be so, it may suffice to state the conclusions he reaches: "When one or more family members begin to feel a continuing inbalance they start to engage in conflict about them (the exchanges made between family members) and for various reasons they may also feel they cannot submit, escape, or right the balance. Such conflicts can escalate to the point of violence because no simpler or easier resolution emerges". (Goode 1971:26). In such a setting, it may be possible to view violence as a resource to be used to achieve a desired end.

According to O'Brien (1971) violence is a resource which is used when a person (generally the male), status or identity is either threatened or undermined through real or imagined under-achievement. He writes "violent interaction is generally seen to involve the direction of coersive force by the superior status group in a social system towards those in lower status categories. The coercive force is expected to be most often applied in times when there is a threat to the innate legitimacy accorded to those in the superordinate positions by those in the subordinate positions". (O'Brien, 1971:90) O'Brien's research led to the conclusion that "family centred violence is associated with the occurrence of a condition in a family where the achievement ability of the husband is less than or inconsistent with his prescribed, superior status". (O'Brien, 1971:71)

The propositions of this theory are insufficient to explain the high level of violence in the family. That is, it is unlikely that all men or women who are violent feel devaluated or lack self-esteem. Furthermore this theory fails to explain why family members are the likely victims of individuals who have experienced self-devaluating forms of behaviour.

The Two Minor Theories

Psychopathology and Alcohol and Drug Abuse Theory of Violence

As has been indicated above, two additional "theories" have been selected as possible explainers of the occurrence of domestic violence. Gelles and Strauss(1979) write that according to psychopathology theory, "violence is caused by an abnormality which occurs within some individuals,....violent because of some internal aberration abnormality or defective characteristic" (Gelles and Strauss 1979:561) This model has been used to explain sensational mass murders (eg. the Manson killings, the murders of the Moors and the Jones suicide pact) and it is used as a way of explaining the occurrence of child abuse. Wasserman (1967), Steele and Pollock (1974), Kempe et al (1962) are exponents of this theory. The inadequacies of this theory stem from its inability to explain precisely which traits are associated with violence. This theory also fails to account for the occurrence of physical violence in the "average couple", both of whom may not be mentally ill.

Alcohol and drug abuse theory of violence is more a popular or folk explainer of violence rather than a fully fledged theory. In a study carried out in New South Wales, it was found that "nearly 60% of the attackers had been drinking before the assault". (New South Wales Bureau of Crime Statistics and Research, 1975:6) The Report of the New South Wales Task Force on Domestic Violence (1981) also draws attention to a number of Canadian and U.S. studies which "place the incidence of alcohol use in domestic violence at about 50% for men and 20 % for women". (Report of New South Wales Task Force on Domestic Violence, 1981:33) Alcohol abuse is sometimes seen as enabling a person to have time out, that is "being drunk may provide individuals with a convenient excuse for their untoward behaviour.... Thus, some men get drunk to give them an excuse to hit their spouses and children". (Gelles and Strauss, 1979:561)

The above two theories have been selected as explainers of domestic violence because, according to the writer's experience at the F.C.A., one encounters physical violence associated with mental ill-health or alcohol abuse in those clients presenting to the Counselling Section, and it does seem important to account for psychopathology or alcohol abuse related violence, particularly given that the two appear associated so frequently. It could well be that even if there is an association between these two variables and domestic violence, this will not improve our understanding as to why a person who is mentally ill or a person who drinks to excess is violent. There are many people who fall into these two categories who are not violent.

The three major theories and the two minor theories selected have short-comings as possible explainers of the occurrence of domestic violence and attention has already been drawn to some of these. Given that domestic violence is a complex form of interactive behaviour, a unifactorial theory is likely to prove inadequate as an explainer of this behaviour. "It is difficult to conceive violent acts between family members as arising out of a single causal factor, such as, psychopathic or genetic conditions, because of the various social and social psychological elements that are associated with occurrences and patterns of family violence." (Gelles, 1972:184-185) The theories of violence selected do not attempt to cover all aspects of violence, but are chosen because they appear to be applicable to the life experiences of the subjects in the sample and a knowledge that the data are available.

Physical Violence Defined

Initially, the conflict Resolution Scale (Strauss, 1978: 445) was going to be used for classifying the degrees and severity of physical violence which occurred between spouses. On perusal of the files, the scale proved itself inadequate in that it failed to accommodate the kinds of violence encountered. The following are examples of physical violence which did not fit adequately into the classifications of the scale, e.g. "suffocate with a pillow, strangle, bite, bang head on the ground, knee, pinch, arm twist, use of axe, use of piece of metal, use of broken bottles, unwanted sexual advances, ripping clothes off, attempted rape, rape and murder." The scale failed to provide an item covering sexual violence between the parties. It was devised in 1978 and perhaps the concept of marital rape was not as widespread then as it is now. Furthermore the scale has inadequate categories for vague and generalized assaults.

The following revised scale will be adopted:

1. (throwing things at spouse)
2. (pushing, shoving, grabbing)
   pinching
   unwanted sexual advances
   ripping clothes off
3. (slapping)
   arm twisting
4. (kicking, biting or hitting with fist)
   knee
   scratch
   bite
5. (hit or try to hit with something)
   attempted rape
6. (belt up)
   rape
   suffocate with a pillow
   strangle
7. (threaten with knife or gun)
   threaten with axe, broken bottle, blunt or sharp object.
8. (use gun or knife)
   use axe, broken bottle, blunt or sharp object
   murder

The items in the original scale are bracketed. The additions are outside the brackets. It is hoped that the additions are also ranked in order of severity and increasing physical violence.

Note, it will be assumed that if a subject is capable of committing violence at the severity of item 7, as well as less severe kinds of violence, it will be assumed that he can commit the kinds of acts of violence ranging from item 7 down to item 1. Consequently only the highest degree of violence will be noted.

Method:

This study is an exploratory one using descriptive survey techniques. A sample will be selected from a population of cases in which physical violence has occurred and in which counselling has been ordered. Two approaches will be used to gather the data. The first involves content analysis of secondary data of the F.C.A. files which constitute this sample. The second will make use of a questionnaire schedule administered to the subjects in the sample. Such an approach will also test the reliability of the content analysis schedule. Variables will be analysed with the aid of the Special Package for the Social Sciences. Associations between variables will be identified as factors leading to physically violent behaviour.

The Population:

The temporal location of the study will be 1981. This year is selected for a number of reasons:-

i. given the relative recentness of the case having come before the F.C.A., details of the case could still be fresh in the minds of counsellors who will be asked to furnish further details about their contacts with the subjects:

ii. the number of injunctions sought in that year are known and, thanks to the Institute of Family Study, computer printouts on these cases for which an injunction and counselling have been ordered are available:

iii. Australian Bureau of Statistics data are available for that year, so that comparisons can be made between the characteristics of the sample and the general divorcing population for that year.

The Sample:

Two criteria apply for a case to be included in the sample:

1. a personal protection injunction has been ordered:
2. counselling of any kind has been ordered.

"Injunctions can be granted by the F.C.A. to include restraints about property, money, the use of the family home and relationships between adults and their children". ([illegible], 1982:1) In 1981, there were 769 cases in which injunctions had been ordered, however, not all injunctions relate to personal protection. Cases for which a non-personal protection injunction has been ordered will be excluded. The ordering of a personal protection injunction will serve to operationally define the occurrence of physical violence.

That is, a Judge of the Family Court of Australia, was satisfied by the evidence that physical violence had indeed taken place and as a result of this, ordered an injunction.

The other criterion for inclusion in the sample, is that counselling has been ordered. The Institute of Family Studies computer has identified such cases. Due to an order for counselling being made, the file will contain further information in the form of counselling reports.

List of variables to be measured

Dependent Variable

(i) Physcial violence.

Independent variables

A. Major variables:

(i) Social Learning Theory -
- (a) experience with physical violence in family of origin
- (b) experience of physical violence in previous adult relationship

(ii) Structural Theory -
- (a) stress
- (b) value differentials;
- (c) isolation

(iii) Resource/Self-Attitude Theory -
- (a) status differentials;

(b) self-devaluating psychosocial experiences.

B. Minor variables:

(i) alcohol/drug abuse;

(ii) mental illness/psychopathology.

C. Other Information Gathered:

(i) general demographic data;

(ii) previous F.C.A. and counselling contacts;

(iii) use of refuges;

(iv) use of police;

(v) has reconciliation occurred;

(ci) is the physical violence of a chronic or acute nature.

Validity, Reliability and Errors

Secondary data sources are defined as "any information originally collected for a purpose other than its present scientific one". (Black and Champion, 1976:505) - These have the advantage of being economical to retrieve, the information is readily available, the co-operation of respondents is not required and documents can bring together data from remote times and places. Conversely there are disadvantages in that the nature of the material, that is affidavits, implies a one-sided, biased presentation of events, containing very likely a degree of distortion ranging from unwitting deceit to outright lies. Affidavits for the same client may have been prepared by a number of solicitors with different styles, approaches as well as individual views of what information ought to be included.

Finally, affidavits will contain inadequate and incomplete descriptions of events. Despite difficulties involved in the use of secondary sources, a number of procedures are available to increase the reliability of the instrument and the validity of the data gathered:

I. Difficulties due to variations in the mode of data collection will be kept to a minimum by only one person conducting the schedule analysis. All cases will be re-analysed to ensure consistency of results and as a test of the reliability of the instrument.

II. Use can be made of internal checks. "The most direct internal check involves the use of questions which require the respondent to elaborate an initial reply". (Hyman, 1955:151). The affidavit material may elaborate on initial allegation of domestic violence by giving details about the kind of violence involved and the dates of its occurrence. Further details about the same incident could also be found in a Counselling Report or reference could be made to it in a judgment, thereby lending further credence that any event took place as originally described.

III. For the use of external checks, it is possible to make "a comparison of the datum under study with findings on the same or related problems collected by other agencies or individuals." (Hyman, 1955:163) Two such studies are available namely the Report of the New South Wales Task Force on Domestic Violence (198[illegible] and the Study of the Management of Injunctions in the Family Court of Australia, Brisbane (1982). It may be possible to make use of both studies for the purpose of comparing the demographic characteristics of the samples.

IV. It is possible to use the account of "a second respondent to check on the quality and meaning of the report of the first respondent, under conditions where there is some complementary relationship between the two respondents." (Hyman, 1955:165) Affidavit material could be used in such a way however, it often happens that allegations made in one partner's affidavit are denied in the other's affidavit. When this occurs the account of the person assaulted will be accepted. Such an approach is adopted because the definition of physical violence used stresses that it is how an event is perceived, which determines its violent nature. Consequently, if a victim alleges the occurrence of a violent event, that version will be accepted on face value as being true.

V. A further external check can be carried out involving the comparison of the aggregate findings from the survey with some official record about the same entity for the population as a whole." (Hyman, 1955:167) This could be done through the use of the Australian Bureau of Statistics Document Divorces Australia, 1981.

The Study So Far

Forty nine cases met the criteria. This was finally reduced to forty cases because in six cases no specific detes of occurrence or instances of physical violence were mentioned. The injunctions in these cases were granted to prevent verbal harrassment or threats of physical violence. One case was excluded because the couple had no children and the presence of children is required for sample uniformity when the date is analysed by computer at a later stage. Two more cases were excluded because the violence was not between the spouses but involved other people, e.g. grown children and friends. A total sample of forty cases was thus obtained. With the exception of those subjects who now reside outside a thirty kilometre radius of the Melbourne G.P.O., all remaining subjects will be asked to participate in an interview. This stage of the study has not commenced yet. The date which is currently available has been extracted from the contents of the F.C.A. files as well as F.C.A. Counselling Records.

Results

No statistical analysis has been carried out on the results currently available. These findings are very tentative and data still needs to be gathered by interviewing the subjects. The findings offered are primarily in the form of frequency distributions. Some comments will be made on the variables selected.

Dependent Variable

(1) Physical violence

Strauss' (1978) Modified Conflict Resolution Scale was used to measure the severity of the physical violence which occurred between the subjects. The violence which occurred appeared to be predominantly of medium to high severity. Fifteen couples (37.5%) assaulted each other either with kicking, biting, hitting with the fist, banging heads on floors and doors, kneeing, scratching and biting. Eleven couples (27.5%) threatened each other with a knife, gun or other dangerous implement. There were four cases (10%) in which the husband either tried to rape or suffocate the wife and three cases (7.5%) of attempted rape or trying to hit the spouse with something. There were two cases (5%) in which a knife, gun etc. were used. Five cases (12.5% violent acts included throwing things at the spouse, pushing, shoving, grabbing, slapping and unwanted sexual advances. A tentative conclusion which could be drawn from this is that orders are granted predominantly in those cases involving medium to high severity violence

Independent variables

A. Major variables

(i) social learning theory -

Social learning theory could have explained the occurrence of physical violence in only four cases, and it is in only one of these four cases that one can say with some certainty that a subject witnessed violence between her own parents. In the other three cases, it can only be assumed that social learning theory was at work by reading between the lines of the affidavits. Clearly this is a totally inadequate research procedure. Affidavit material very seldom provides a detailed background of a persons upbringing and to find evidence substantiating this theory, the subjects will have to be interviewed to gather further information about their background.

(ii) structural theory

(a) stress

Incidents which could be stress-provoking were identified in all but four (10%) of the couples. In these four cases all that could be said was that one did not know whether or not stress was at work. It seems as if any life event whether positive or negative can be stressful to a person or a couple. More details will be gathered when the subjects in the sample are interviewed.

(b) value differentials

Like stress value differentials were found in all but three couples (7.5%). In these three cases, there is very little information on the affidavit material for the writer to draw on, consequently it was impossible to tell whether or not there were value differentials between couples. It could be that this concept, like the concept of stress, is two broad and general and that with a little ingenuity one can say that value differentials are present in any family or every family.

(c) isolation

Most cases refer to the presence of supportive networks whether in the form of family, relatives or friends. Generally speaking reference is made in the affidavit material to Mr. X having his mother and sister-in-law to help him care for the children or that Mrs. X left the matrimonial home and went to live with her sister and father. In seven cases (17.5%) no reference is made at all of any parental or family support networks. It is interesting to note that in five out of the seven cases the violence which occurred between the couple was of severity seven on the Modified Conflict Resolution Scale (i.e. high severity violence), the others were severity six and severity five respectively. It is not known whether this is a statistically significant finding however it is numerically striking.

(iii) Resource/self-attitude theory

As for the structural theory for violence this particular theory as well was able to accommodate all but two cases.

(a) status differentials

There were seven cases (17.5%) in which there was no differential in status between the parties. This was determined by looking at the educational achievment of the parties, their income, whether or not they were employed and the occupational status of the parties. In all of these the husband had a superior ascribed status. According to self attitude theory, the husband in these cases would not have been threatened by his spouse since, on these variables at least, she was not superior to him. Nevertheless, two of these cases manifested violence at severity seven, one at five, three at severity four and one at severity three.

(b) self-devaluating psychosocial experiences.

There were eighteen cases (45%) in which one or both partners had self-devaluating psychosocial experiences. These experiences were in the nature of affairs or the belittling of the spouse for perceived shortcomings in the areas of employment, income, capacity as a home maker and capacity as a lover. There were sixteen cases (40%) in which allegations were made that one of the partners was having an affiar.

B. Minor variables

(i) Alcohol/drug abuse

There was a direct link between the occurrence of physical violence and alcohol abuse in eight cases (20%). This is in marked contrast with figures cited above. Given that one of these figures is as high as 60%, (New South Wales Bureau of Crime Statistics and Research, (1975) subjects in this sample may be motivated toward violent behaviour by other, non-alcohol related, factors. That a subject consumes alcohol is mentioned in nine other cases (22.5%) however no connection is made between alcohol being consumed and the occurrence of the physical violence. The other 23 cases (57.5%) no mention is made of alcohol being consumed or at least it is not known. One would expect that if a link existed between the two forms of behaviour, a solicitor would draw attention to it for his or her client's advantage. Hence if the only mention of alcohol abuse made in the affidavit material is the allegation that one of the spouses drinks at the local hotel three nights a week, but no link between this and violence is made, it will be accepted that there is no link between alcohol abuse and domestic violence.

(ii) Mental illness/psychopathology

Allegations or references are made to the effect that one or other party suffers from some form of mental illness/psychopathology ranging from the psychotic to the neurotic, in twenty four cases (60%). No data are available for the general health of the community however one would hope that such a figure does not reflect the general mental well being of society in general. As has been stated elsewhere these allegations are accepted on face value, because, no more direct information about the cases is as yet available. There are five cases in which depression is mentioned as resulting from trauma of the separation, in six cases one of the parties has sought psychiatric help, and in three cases one of the parties had to be committed to a mental institution or admitted himself to one. In the three other cases there are allegations of paranoid schizophrenic bahaviour, in two other cases one of the spouses behaves in a disturbed/deranged manner and three other cases subjects manifest examples of fetishism, sadism and low impulse control in the term of child molestation. There are also three cases in which a subject had taken a drug overdose, in one case on three occasions. Given the context in which these allegations are made, the end result is often to disparage, denegrate or stigmatize one of the parties to the advantage of the other. However a clearer picture will emerge when the subjects are interviewed and a more detailed assessment of the mental health of the group can be made.

(iii) Place of Birth of Subjects

There were twelve cases (30%) in which both the husband and wife were born in Australia. Four cases (10%) in which the husband was born in Australia and the wife was born overseas. There were nine cases (22.5%) in which the wife was born in Australia and the husband was born overseas, and thirteen cases (32.5%) in which both the husband and wife were born overseas. There were two cases (5%) for which the birth place of the husband and the wife were unknown. If one compares these figures with those of the Australian Bureau of Statistics, husbands and wives were born in Australia in 63% of those cases seeking a dissolution in 1981 as opposed to only 30% of this sample. This means that the proportion of non-Australian born subjects is much higher for this sample than for the overall Australian population. However, given that Melbourne has a very high migrant density, in comparison with the rest of Australia, one might expect that this sample would yield a high percentage of non-

Australian born subjects. In view of the difference being so considerable, 63% as compared with 30% it seems desirable to conduct some statistical tests to establish whether this difference is a significant one or not.

C. Other Information Gathered

(i) Use of refuges

Women sought the help of refuges following separation from their spouses in seven (17.5%) cases. In another case (2.5%) one woman sought the help of a religious welfare organisation but it is unlcear whether she actually resided in a womens refuge. It is worth noting that women sought the help of a refuge when the violence involved was of high severity. For example, two women had experienced physical violence at severity six, three women had experienced physical violence at severity seven and one at severity eight. Only one women who had exprienced violence at severity four sought the help of a refuge. One may speculate that, given the severity of the violence in these cases, the women involved would wish to leave a dangerous situation as soon as possible and live in an environment which would separate and protect them from their spouse.

(ii) Use of Police

The police were called and came following a request for help in a case in which physical violence had occurred in thirteen cases (32.5%). The police were called but either refused or were unable to offer assistance in seven cases (17.5%). In ten cases (25%) there had been either previous police involvement or police involvement subsequent to the date when the violence occurred. In the other ten cases (25%) no mention is made of police help being sought. In one of the cases where the police were called and came to the callers assistance, the police referred to what had been happening as a "domestic" and left. In one of the cases the police were called but refused to assist the woman who had been raped by her husand telling her that they required evidence. Those cases in which the police were called but were either unable or refused to attend, lends support to the commonly held notion that the police are either unwilling or unable, for a number of reasons, to assist people who find themselves in such situations. The police were called and came, or called and did not come, predominantly in those cases involving violence of medium to low severity. Police help was sought only in three cases in which the severity was seven and higher.

(iii) Reconciliation and Living Under the Same Roof

There were two cases (5%) of high severity violence in which the couples involved effected a reconciliation. This reflects the experience of refuge workers who find that a proportion of their clients eventually reconcile with their spouses. Clearly such reconciliations occur for a number of reasons which cannot be gone into at this point of time. There are five cases (12.5%) in which couples choose to live under the same roof, despite the separation and despite the violence which has occurred. Some of these cases involve couples who have been married fifteen years and more. Perhaps some people can tolerate each other with the aid of F.C.A. injunction preventing each from assaulting, threatening, harassing and molesting the other, however another possibility could be that these people simply have no other choice but to continue living together.

(iv) Frequency of Violence

There were eight cases (20%) in which there appeared to be only one assault or at least no mention was made of previous assaults having occurred. The severity of violence involved for this group ranges from the lowest to almost the highest, i.e. in three cases the physical violence was of severity seven, namely threats with knives, guns and other implements. In the rest of the cases, the violence appeared to occur with greater frequency Whether or not the physical violence is a chronic state of affairs or an acute manifestation has to be determined as the literature on violence suggests that there is a difference in dynamics between the two forms of violence. It may be desirable to break the sample up into two groups, that is, those cases involving chronic and those cases involving acute battering so as to attempt to establish whether different factors are operating.

(v) Involvement in Physical Violence

There were twenty five cases (62.5%) in which the husband assaulted a wife and thirteen cases (32.5%) in which the husband assaulted the wife and the wife assaulted the husband. There were two cases (5%) where the wife assaulted the husband. There is a tendency for violence to escalate and this is borne out to a certain extent in those cases in which physical violence occurred between husband and wife, that is in which both spouses were involved in the violence. In four of these cases it was the wife who initiated the physical violence. As is often the case in affidavit material the bruising to the wife is explained by the husband as resulting from his attempts at defending himself by pushing the wife away. However in twenty five cases, as has been indicated, the violence was perpetrated by the husband to the wife and in these cases no mention is made in the husband's affidavits of the wife assaulting the husband. Perhaps it is culturally inadmissible for the husband's affidavit to contain examples of his being assaulted by the wife. Further light will be cast on this when the subjects in the sample are interviewed.

CONCLUSION

It was anticipated that social learning theory would not be supported by the affidavit material. This is particularly so given that affidavit material is more generally concerned with the recent rather than the distant past of the person for whom they are being prepared. Evidence was found supporting both the structural and self-attitude/resource theories as possible explainers of domestic violence, however it seems almost too easy to identify variables supporting the two theories. It is hoped that when the subjects are interviewed, it will be possible to determine which stressful life experiences, value differentials, status differentials and self devaluating psycholsocial experiences led to or resulted in manifestations of physical violence. The results obtained in the isolation component of structural theory are worthy of further exploration with the subjects themselves. The same applies to the minor variables of alcohol abuse and mental illness. Attempts will be made to compare the incidence of mental illness and alcohol abuse with known figures for the Australian population as a whole. The statistical significance of the higher proportion of non-Australian born subjects in the sample will also be established. More data will be gathered on the use of refuges and police plus some attemtps will be made to understand why parties reconcile. Those cases in which physical violence occurs on one occasion only will also be assessed in detail so as to establish how this violence differs from more chronic patterns of violence. Finally the section on who is violent draws attention to the existence of the battered husband.

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A study of access patterns between three groups differing in their post - separation conflict

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INTRODUCTION

Several decades ago a widespread belief existed that children were adversely affected by divorce. This was supported by research studies which seemed to show that children from disrupted marriages or fatherless homes were more likely than others to be delinquent, psychologically disturbed and low achievers (Monahan, 1957; Nye, 1957). However, there were many methodological difficulties in these studies and it was difficult to tease out the effect of the divorce from the effect of problems that led to the divorce.

There was also a considerable body of literature related to attachment theory and the effect of separation on children from their primary parent (Bowlby, 1969). In a review of the literature on parent-child separation it was concluded that:

> "a child's separation from his family constitutes a potential cause of short term distress, but separation is of little direct importance as a cause of long term disorder. Separation experiences have some association with later development of anti-social behaviour but this is not due to the fact of the separation itself, but rather to the family discord which precedes or accompanies the separation .... a good relationship with one parent can go some way toward mitigating the harmful effect of a quarrelsome unhappy home". (Rutter, 971:255)

In more recent years there has been an increase in empirical research into the effects of parental separation and divorce upon children and whilst divorce is considered to be a major upheaval in the child's life, it is argued by many authors that it should not be regarded as automatically synonomous with disaster (Anthony, 1974).

Wallerstein and Kelly, 1979, studied 131 children over a five year period and have had further follow-up at 10 years. Their results provided valuable information about the effect of divorce on pre-school, early latency and late latency children. They stated that children are affected by at least 4 stages in the process of divorce:

1) the pre-divorce family

2) the disruptive process of divorce itself, including the events leading up to and surrounding the parents' decision to separate and the transition period immediately following;

3) the changed social, economic and psychological realities of being reared in a family in which divorce has occurred; and

4) the alterations in the parent/child relationship that took place after marital break-up.

Westman (1970) described divorce as a process rather than an event. He stated that one third of divorces are followed by turbulence that could be pathogenic for the affected children. The types of conflict situation include:-

1) parent centred post-divorce turbulence in which the parents perpetuate the same conflicts in their relationship that existed beforehand;

2) child centred turbulence in which the children manipulate the parents to bring about a continuation of the parental conflicts or to promote the reuniting of the parents;

3) parent and child turbulence - in which one parent and a child team up to produce an effect on the other parent;

4) relative induced turbulence in which there is a stirring up of conflicts by relatives and in-laws.

Within the Family Court of Australia, psychologists and social workers employed by the Court have felt that such post separation turbulence is frequently related to the spouses' failure to adjust to the separation and often acted out within the adversary system through custody and access disputes. Whilst the Family Law Act, 1975 states that the best interests of the child are the paramount consideration, concomitant with this has been the assumption that children's interests will be best served by remaining in contact with both parents and that access should therefore occur on a regular basis until the children become adults. Frequently the non-custodial parent has access (at least according to Court orders) on an every second weekend basis.

The view that access is a child's undeniable right has been supported by several studies (Kelly and Wallerstein, 1979; Rosen, 1977) which also emphasised children's strongly expressed desires to maintain contact with the absent parent. One study has even been able to quantify the amount of time lost between the access parent and the child due to the separation; finding that the more time lost with the parent the greater the maladjustment (Jacobson, 1978).

However, Goldstein, Freud and Solnit, 1973, on the basis of psychoanalytic theory and developmental studies concluded that the non-custodial parent should have no right to see his or her children except at the sufferance of the custodial parent, and that access to the courts for resolution of such controversy be denied. This latter view has been strongly criticised (Benedek and Benedek, 1977; Mahoney and Mahoney, 1974), although data from a recent study suggests that infrequent contacts with the absent parent might be associated with better adjustment (Kurdek, Blisk and Siesky, 1981).

Littner (1973) proposed four reasons why contact should be maintained with the non-custodial parent:-

1) it helps children to deal with their conscious fantasies about the other parent;

2) it helps decrease children's feelings of responsibility for the separation;

3) it minimizes their fear that they may never see the other parent again; and

4) it provides children with a living experiment of both a mother and a father.

In general, most of the studies presently available have tended to use samples where parents are predominantly white, middle-class individuals, who are motivated to take an active part in ongoing research (Wallerstein and Kelly, 1979; Hetherington, Cox and Cox, 1978).

Smiley and Hirst (1980) studied the style of access patterns in a sample of 147 families who had contact with the Family Court in Brisbane between January and September of 1977, either for divorce alone or more complex litigation. The results showed that access was not occuring with anywhere near the frequency that court counsellors and social scientists, in general, have seen as necessary to meet the needs of children in separating families. Their results showed that in over 54% of the families, children saw their non-custodial parent six-monthly or less and in 32% of the sample, there was no contact between the absent parent and the child. For only 17% of the families was access operating on a fortnightly basis. These results however need to be interpreted with caution. Whilst 66% of their sample had been separated from 1-4 years, at the time of interview, the remaining 34% had separation times varying from 5 years to 14 years. The major focus of their work was on the style of access arrangements; whether it was free (whenever the parents or children wanted) regular but flexible, regular but rigid, or irregular. No details of the duration or frequency of access over time were obtained. Another limitation of their study was, that whilst the sample was representative of the court population, as a whole, it was impossible to draw comparative conclusions about those families who chose different forms of litigation because of the small numbers in certain groups.

THE ACCESS STUDY

The present study aimed to investigate access patterns between three groups differing in their degree of post-separation conflict, as defined by the type of litigation they have sought with regard to divorce, custody and access.

Whilst the Family Court assumes that it is in the child's interests to remain in contact with both parents, and makes orders accordingly, there is little empirical evidence as to what actually occurs in the general divorce population, and as to the durability or effectiveness of the Court orders that are made.

The current study investigated differences in style, frequency and durability of access patterns between three groups:-

1) Group 1 consisted of families who have used a minimum of litigation. They have applied to the Family Court only for a divorce and therefore may be considered to have been self-determining with regard to decisions concerning custody or access. This group will be referred to as the No Order Group.

2) Group 2 consisted of families who sought litigation with regard to access and/or custody, reached an agreement and obtained consent orders in the Family Court. This group will be referred to as the Consent Group.

3) Group 3 consisted of families who contested access and/or custody through to a defended hearing, so that a judicial decision was made. This group are the least self-determining and have made extensive use of the adversary system in order to resolve their conflict. This group will be referred to as the Judicial Group.

METHODOLOGY

The design of the study involved a comparative study of the three groups as outlined above. Data was gathered using an in-depth structured interview of the custodial parent. The interviews were carried out by 5 Counsellors from the Family Court Counselling Section, Melbourne Registry. This had obvious advantages as they were all experienced interviewers, who have dealt with the subject matter for between 4-6 years each, and by definition were capable of clarifying some of the important features of the access experience. The interview lasted approximately 1-1½ hours and covered the following areas:-

1) Custodial and access households;
2) Type of application and orders sought;
3) Type and severity of access problems over time;
4) Help-seeking behaviour over time;
5) Access patterns for each child at six monthly and thereafter yearly intervals;

6) Contact with the counselling service and its usefulness;
7) Relationship and contact with ex-spouse; and
8) Attitudes to access and its effects on children.

In order to select the sample to be interviewed several criteria were developed.

1. It was seen to be necessary that the duration of time between the Court order and the time of interview was a minimum of 12 months, so that the durability and workability of such orders could be tested, although all three groups would be asked to comment on access since separation.

2. Parents would be interviewed who had care and control of all children mentioned on the file at the time of the last order. To include families where there was known to be split care and control of the children was considered an unnecessary complication.

3. The custodial parent's last known address was to fall within the Melbourne Metropolitan area. This criteria was included for the expediency of the interviewer (i.e. to minimise travel time).

4. At least one child in the family should be aged between 2-13 years at the time of the last Court order. This criteria was chosen to reduce as far as possible the number of children below 2 and over 14 years, where access patterns are likely to vary greatly.

The period of separation was limited to between 1 and 4 years in order to reduce the range of separation times so that comparisons could be more easily drawn.

6. It was considered imperative that the sample, within the above criteria, be randomly selected, so that all court lists were searched between August 1980 and July 1981. The time frame can be represented diagramatically as follows:-

August 1980	July 1981		July to Dec 1982
Court file search for custody and access orders and divorce only	Time of last order	(min 12mth) (period)	Interview period

In order, as far as possible to ensure random selection, all court lists between August 1980 and July 1981 were searched. List A (N=1972) included all cases in which custody and access orders were made, either by consent or by a judicial decision. List B (N=631 out of a total pool of 6,310) included every tenth case where a divorce only was granted and no custody or access orders were made. Random numbers were then generated for each list (206 for List A and 257 for List B) and files corresponding to these numbers were then searched to determine whether or not they fitted the selection criteria.

Following this step, 63 files fitted the selection criteria for the No Order Group, 56 files fitted the selection criteria for the Consent Group and only 11 files fitted the selection criteria for the Judicial Group. It was not surprising that fewer cases fitted for the Judicial Group as previous studies (Horwill, 1979) indicate that only 10% of cases have final judicial hearings. Further searching of the files in List A led to a final pool of 28, for the Judicial Group.

Having selected our core sample, letters were then sent requesting participation in the study. Of the 147 letters sent 26 (18%) were returned as"wrong address". Of the 121 remaining,73 (60%) responded positively, 15 (12%) responded negatively and 33 (27%) did not respond. Of the 73 positive responses, three were not interviewed due to illness or failure to be at home despite several appointment times being given.

The final number of custodial parents interviewed was 21 in the No Order Group, 28 in the Consent Group and 21 in the Judicial Group giving a total of 70 families.

ANALYSIS AND RESULTS

The structured interview covered 197 separate information categories. Some informal comments were also elicited from the interviewees and a content analysis of these is planned at a later stage. For ease in presenting the results the following notation shall be used; * denotes a .05 significance level, ** denotes a .01 significance level and *** denotes a .001 significance level.

The results were analysed using an SPSS package which allowed for examination of distributional characteristics on all items of information while comparing across the group on separate items. The results of the analysis shall be presented under the following headings:

1) Custodial and Access Households

Overall, the results indicated that the groups were well matched; there being no significant differences on most of the demographic variables (e.g. geographical proximity of the parties; number, age and sex of the children; age, marital status, occupation and work status of the access parent, of the custodial parent and of their new partners (if any); income and major source of income in the custodial household, country of birth and cultural mix).

There were however several results of note. There were significant differences between the groups in terms of the following:-

(a) The duration of the marriage: the No Order Group tended to have shorter marriages than the other two groups, indicating that perhaps this may be related to their style of decision making with regard to custody and access**. Perhaps shorter marriages mean that the couple are less likely to become involved in litigation.

(b) The length of the separation: whilst this was controlled to some extent by the design of the study (i.e. within a range of 1 to 4 years) more families in the Consent Group presented with a separation of two years or less**. The reasons for this are not obvious. However, subsequent analysis of other information suggested that this particular group is more closely involved in the issue of maintenance, the urgency of which may necessitate earlier applications to the Court.

(c) The sex of the custodial parent: the results indicated that there were a larger percentage of custodial fathers in the Judicial Group than in the other two groups***. In the No Order Group and the Consent Group 80% of children lived with their mother whereas in the Judicial Group only 54% of children lived with their mother. Similar results have been found by Horwill and Bordow, 1983.

(d) The number of adults in the custodial and access homes: there were significantly* more one adult families in the custodial homes than in the access homes. One possible explanation for this is that it is mostly fathers who are the access parents (i.e. without the full-time responsibility for children) so this undoubtedly provides more time and opportunity to enter into new relationships.

Several other results are not easily explained:

(a) The age of the access parent significantly** differentiated between the groups indicating that a larger percentage of the Consent Group are over 40 years of age and that a larger proportion of the Judicial Group are under 30 years of age.

(b) The number of years the custodial parent has lived in Australia was also significant** indicating that a larger proportion of foreign born parents in the Consent Group had been here for a greater period of time.

When compared to the general divorce population the study sample did not differ significantly on most demographic variables. (e.g. number of children, work - status, country of birth and cultural mix) with the exception of the following:-

(a) Duration of the marriage. The sample was under-represented in marriages of less than 5 years and 20-24 years and over represented in 10-14 year marriages. Since we were dealing only with couples with children between 2-17 years, this would by definition exclude younger marriages and marriages of older duration.

(b) Age of the custodial parent. When compared with the general divorce population the sample was over-represented in 35-39 year age bracket and under-represented in 25 year age group. This is also related to the duration of the marriage and the likelihood of having children of a particular age at that stage.

(c) Occupational status. Information on occupational status presents a complex problem in terms of identification and appropriate categorisation within the available census categories. The sample is over-represented with professionals, semi-skilled and unskilled, white collar workers and under-represented with semi-skilled and unskilled blue collar workers. The differences between the study sample and the census figures are not easily explainable although it seems likely that there would be a genuine tendency for professionals and skilled white-collar workers to litigate custody and/or access. This explanation has wide support in other studies conducted on court populations which suggest that these particular groups of fathers are regularly/ over-represented in terms of their occupational distribution. (Horwill and Bordow, 1983; Bordow, Marshall and Turner, 1983).

2) Type of application and orders sought

As expected, the type of orders sought significantly distinguished between the groups. In the No Order Group both the custodial and access parent wanted a divorce***. In the Judicial Group both parents were concerned mainly with obtaining custody***. In the Consent Group, however, the custodial parent was seeking orders in relation to maintenance*** and the access parent was seeking orders in relation to access***. This points to the link between access and maintenance in the Consent Group, in so far as agreements or consent orders may have been reached in a trade-ff situation rather than these two needs being seen as discrete. There were no significant differences between the groups in relation to property or joint custody applications.

3) Type and severity of access problems over time

(as expressed by the custodial parent)

The results for the whole sample are presented below in Table 1. Those items with an asterisk indicate these which significantly distinguished between the groups. In all cases it was the Judicial Group who, not surprisingly, complained the most about these access problems. It is of note that the most frequently indicated problem, - "children often disturbed or upset by access", occurred only in 29% of the total population sampled.

TABLE 1 in here

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4) Help-seeking behaviour

(In relation to the problems arising out of the initial access arrangements and in relation to problems arising out of the access arrangement at the time of interview)

All the help-seeking source categories significantly distinguished between the groups in their past help-seeking behaviour, and all but two (medical and legal) significantly distinguished between the groups in their help-seeking behaviour at the time of interview. The results are presented in Table 2. From the Table it is clear that lawyers, family and friends and one's spouse were turned to the most frequently for help, whilst the Welfare, Police and the Courts received a very low profile.

TABLE 2 in here

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5) Access patterns and style for each child

Each custodial parent was asked to comment on access patterns for each child at 4 time intervals, since the separation (6 months, 1 year, 2 years and 3 years plus).

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Parents were asked to comment on both the frequency of contact (once a week or more, fortnightly, monthly, 3 monthly, 6 monthly) and the duration of contact (hourly, all day, overnight, weekly, holidays). The results indicated that the three groups do not differ significantly in the duration and frequency of access at any point in time.

In order to assist in the analysis an access intensity matrix was developed which gave a measure of both duration and frequency. The concept of the access intensity matrix is presented below.

DURATION

FREQUENCY	Hourly All Day	Overnight Weekly/ Holidays
more than once a week once a week fortnightly	2 - HI/LO (High frequency, Low duration)	1 - HI/HI (High frequency, High duration)
monthly 3 monthly 6 monthly	4 - LO/LO (Low frequency, Low Duration)	3 - LO/HI (Low frequency, High duration)

ACCESS INTENSITY MATRIX

The access intensity matrices for the entire sample at the different points in time since the separation are presented in Tables 3, 4, 5 and 6.

TABLE 3 in here

TABLE 4 in here

TABLE 5 in here

TABLE 6 in here

Although access may decrease over time for some children or actually increase over time, this fact is not dependent on the type of group the children come from. A much higher frequency of contact was noted than that found by Smiley and Hirst, 1980. In our sample 77% of children had contact fortnightly or more often at 6 months after the separation and 66% of children had contact fortnightly or more frequently at 3 or more years after the separation. In only one family (1.4% of the sample) was there no access since the separation.

In addition, we also wished to know the overall pattern of access intensity for each family: e.g. What percentage of the families sampled maintain HI/HI access intensity across time? What percentage of the families sampled switch from HI/HI to LO/LO? etc. The change in access intensity was measured at 6 months after the separation and at the time of interview. The results are presented in Table 7.

TABLE 7 in here

Once a final measure of change was established an attempt was made to relate this information to demographic characteristics (e.g. age and sex of child, sex of the care and control parent, duration of marriage etc), to their litigation history and to the attitudes towards the access parent as expressed by the custodial parent. There were no strong clear relationships suggested by this type of analysis with the following exception:

The custodial parent's perception of the extent of agreement with their ex-spouse about access and about the children's upbringing significantly differentiated* between the overall change in intensity. Those parents who tended to agree about these issues continued to maintain high frequency/ high duration contact over time.

As well as asking parents to comment about access patterns for each child, they were also asked to comment on the style of access overall, and at 6 months, one year, two years and three years plus after the separation. The style of contact was categorised as:-

(a) free (whenever the parents or children want it)
(b) regular but flexible
(c) regular but rigidly defined
(d) irregular

Although the three groups did not vary in the actual amount of access contact, significant differences were detected in the overall style of access behaviour. It is of interest to note that the differences between the groups began to emerge with the passage of time and litigation.

At the time of the separation and 6 months after the separation there were no significant differences in style. The results are presented in Tables 8 and 9.

TABLE 8 in here

TABLE 9 in here

The results indicate that the No Order Group are more able to maintain free or regular flexible access, whilst the Consent Group had a higher proportion of irregular access arrangements and the Judicial Group was unable to maintain free access and moved towards either a regular flexible or regular rigid style of access.

6) Contact with the counselling service and its usefulness

The number of referrals to the Family Court counselling section significantly differentiated between the groups***, with 10% of the No Order Group, 21% of the Consent Group and 100% of the Judicial Group being referred for counselling. The No Order Group received confidential counselling, and the Consent and Judicial Groups received both confidential and reportable counselling. In the Judicial Group 86% had more than two orders for counselling.

It is important to note that the majority of the Consent

Group (79%) had reached their agreement without the benefit of counselling assistance. This is not unusual since a large number of the court population present with agreements to be ratified by the Court or reach such agreements at the Court room door. Considering that the 1982 Family Court policy (which requires all matters concerning custody and access applications to be referred to counselling prior to their first court appearance) did not operate at the litigation time of the study sample, such a high percentage of court orders not involving counselling in the Consent Group is not surprising.

In terms of satisfaction with the counselling intervention, the feedback on its contribution divided evenly between those who perceived it as "helpful" and those who did not. The majority of counselling interventions were for assessment and a report for the Court with little or no efforts at conciliation counselling. Under such circumstances it is not unusual that the clients would perceive the intervention as "unhelpful".

7) Relationship and contact between the custodial parent and the access parent

Whilst it is exceedingly difficult to measure interpersonal relationships and, in particular, to specify the important areas that might have a direct effect on access behaviour, the issue was defined and measured in terms of the custodial parent's perception of the following:-

(a) the ex-spouse as a parent;

(b) their relationship with their ex-spouse;

(c) their feelings towards the ex-spouse's partner;

(d) the extent of agreement between the parents about the children's upbringing;

(e) the extent of agreement between the parents about financial support;

(f) the extent of agreement between the parents about access arrangements;

(g) their mode of communication with the ex-spouse; and

(h) their ideal frequency of discussion with the ex-spouse.

Of all the above the only significant difference*** was in the extent of their agreement about financial support, with the majority of the Judicial Group receiving no maintenance. The greater proportion of custodial fathers in this group probably accounts for this.

The fact that there were no significant differences between the groups on the other issues, is in itself of interest, as one would expect certain differentiation between the members of the groups due to the initial level of conflict concerning the children. One would have expected the relationship between the parents in the Judicial Group to be poorer than the Consent Group, with the No Order Group showing the most positive attitude. Nevertheless the assessment of the relationship 2-3 years following the initial trauma of the separation, indicated that some proces of recovery and stabilisation of the relationship between the parents was operating.

The following results indicate the direction of their perceptions:-

(a) 33% perceived their ex-spouse as a coping parent, whilst 39% perceived their ex-spouse as not coping, the remainder offering no comment;

(b) 50% perceived their relationship with their ex-spouse as fair to excellent, 20% defined it as poor and 30% indicated they had no contact;

(c) 23% indicate that they dislike their ex-spouses new partner, and 53% indicated a positive attitude towards their ex-spouses new partner, whilst the remainder did not know them;

(d) 39% indicated a high level of agreement concerning the upbringing of the children, 8% indicated a level of disagreement, and 53% felt that although access occurred they did not discuss such issues frequently enough to indicate either agreement or disagreement;

(e) 42% indicated that they agree about the degree of financial support, 27% indicated that they disagree and 31% indicated they receive no maintenance;

(f) 86% indicated a high level of agreement with their ex-spouse concerning the actual access arrangements with only 14% suggesting frequent disagreements concerning the visiting arrangements;

(g) In terms of their communication with their ex-spouse, 76% had face-to-face discussion, 24% used other modes such as phone, letters, solicitors etc. Of those who do have face-to-face contact 47% felt that they could discuss the issues well and 25% indicated that such discussions ended in an argument;

(h) The ideal frequency of communication suggested that 53% wanted discussions only when necessary, 34% wanted minimal or no discussion and only 13% wanted frequent discussion.

8) Custodial Parent's attitude to access and the effect of access on children

There were no differences between the results from the three groups on the following categories of information.

(a) whether or not the children were perceived as being affected by the initial separation;

(b) the current well being of the children;

(c) children's view of access (as either a positive or negative experience);

(d) children's refusal to go on access;

(e) the custodial parent's overall attitude to access in terms of its main purpose and whether or not it is beneficial to children;

(f) the ideal access pattern as perceived by the custodial parent;

(g) the custodial parent's perception of their overall coping capacity.

The overall results were as follows:-

(a) 69% of custodial parents perceived their children as having suffered at the time of the separation, 21% indicated that they felt the children were better off, and 10% indicated that the children had not been affected at the time of the separation;

(b) 83% of custodial parents felt that the children were better now than at the time of the separation, with 10% indicating no change, with 4% indicating the children were worse off, and the remainder preferring not to comment in either direction.

The above results accord with the earlier inference that a process of recovery was occurring for the parents in relation to the divorce and suggests a similar improvement in terms of the child's well being.

(c) 76% of parents reported that the children enjoyed the access experience, 11% reported that the children did not enjoy access and 13% expressed no clear cut opinion either way;

(d) In terms of the child's refusal to go on access 59% of custodial parents reported that the children had never refused, 30% had refused only a couple of times, and 11% had refused access on frequent occasions;

(e) 67% of custodial parents saw access as beneficial to the children, with 17% seeing no benefit and 16% remained uncommitted. Correspondingly 83% of parents maintained that the purpose of access was to maintain a relationship with the other parent and perceived it as the child's basic right to do so. Only 17% saw the access experience as a vehicle by which parents could hassle each other or as unsettling for the children per se.

The overall positive picture of access arrangements that was observed may well be a function of the custodial parent's overall attitude to access as a beneficial experience for the children, as well as serving the important purpose of reinforcing the ongoing relationship with the access parent.

(f) In terms of their ideal access pattern 14% of custodial parents wanted access stopped, 10% wanted it increased, 12% wanted it decreased, 30% wanted the arrangements left unchanged and 34% wanted it left up to the children. Those families who had more than one child and had different access arrangements for the children were asked to comment on whether this was a function of the children's age, sex or their wishes. Of those families with more than one child 61% reported no differences in the access arrangements: when they occurred they were attributed largely to the age of the children. The sex of the child played no significant role in determining different access arrangements for different children;

(g) With regard to their coping capacity with any access problems that might arise 51% expressed a high level of confidence in their coping ability, with 49% expressing a fair degree of confidence in their ability to cope. No parent indicated that the demands of the access situation were more than they could cope with.

DISCUSSION

There were obviously certain limitations to the study. Some bias may have been introduced as only the custodial parent was interviewed. It would have been preferable to have been able to cross validate the results by also interviewing the access parent. However any information gained in interviewing separated couples can often be of a highly personal and sensitive nature and it is unlikely that such a high response rate would have been achieved if confidentiality had not been ensured. Many of the results reflect the custodial parent's perception and also rely on their retrospective recall, although a period of three years seemed to be acceptable.

In general the results provide a fairly positive picture of access, with the majority of custodial parent's endorsing the concept of access as beneficial. The majority of children were seeing their non-custodial parent fortnightly or more often. The results differ markedly in relation to the frequency and duration of contact found by Smiley and Hirst, 1980, in which a much smaller percentage of children maintained such contact. There also appeared to be a process of recovery after the initial trauma of the separation with both parents and children stabilising and settling down two to three years later.

The most surprising finding of all is that the initial contact as measured by their litigious behaviour leads to different ways of resolving the problem, but the effect of such different initial levels of conflict intensity diminishes considerably with the passage of time. Whilst the type of litigation may reflect the parent's immediate post separation conflict it does not predict or reflect the duration or frequency of access contact which is likely to develop. The type of litigation chosen by families was related to the style of the access arrangements. This confirmed previous findings. (Smiley and Hirst, 1980). It is encouraging to note that the No Order Group (which forms the majority of the divorcing population at large) was able to maintain free and/or regular flexible access over time, an arrangement which children are said to prefer (Rosen, 1977, Wallerstein and Kelly 1970).

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The Consent Group however had the most irregular style of access, and this may be related to the way in which such agreements were reached. Whether or not access arrangements were made as a trade off for maintenance agreements is unclear.

It does however call into question the advisability of accepting such agreements in the Court without the benefit of counselling assistance. This situation should not occur as frequently now as it has done in the past, (in accordance with 1982 Family Law Court Policy).

Whilst the Judicial Group appear to counsellors at least, to be the most entrenched in their positions, this entrenchment shows itself in their style of access as either regular flexible or regular rigid and not in the intensity of the access. This regularity might be generated by the existence of the Court order per se.

Overall, the results are encouraging in terms of the general access picture that emerged. However, no data was gathered as to the direct effects on the children or the children's perceptions of access. Any conclusions drawn can relate only to a general picture of access and not to any benefits or otherwise from the child's point of view.

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Problem	Problems after initial access arrangement N=37 Number with this problem	Problems at interview N=43 Number with this problem
2. I will now allow access	5	4
3. Spouse does not want access	10	8
4. Too much access	10***	9*
5. Not enough access	7*	1
6. Overnight access	9	4
7. Holiday access	7	12
8. Pick up/drop off times	11*	8
9. Transportation	1	3
10. Children not available for access	3	0
11. Spouse doesn't turn up for access	4	6
12. Children often don't want to go on access	9	5
13. Children's activities during access	5***	9*
14. Children disturbed or upset by access	20	19
15 Access parent's new partner	4	5
16. Access parent incompetent	7	10
17. Child being influenced against custodial	11***	5*
18 Most arrangements break down	6**	3
19. Parental conflict at access changeover	11***	4
20. Bribery	1	3
21. Fear of violence/sexual abuse	1	3
22. Access too rigid	0	3

TABLE 1: Access Problems

From whom help sought	Problems after initial access arrangements (N=37)			Problems at interview (N=43)		
	% seeking help			% seeking help		
	No order Group	Consent Group	Judicial Group	No order Group	Consent Group	Judicial Group
Spouse	8%	24%	27%	12%	16%	14%
Family/Friends	11%	27%	22%	14%	28%	19%
Medical	-	8%	11%	2%	7%	5%
Legal	5%	32%	32%	5%	23%	19%
Police	-	3%	11%	2%	2%	5%
Mental health professionals	-	19%	8%	2%	16%	5%
Welfare Agencies	-	5%	5%	-	5%	2%
Family Court Counselling	3%	14%	22%	-	5%	14%
Courts	-	5%	8%	2%	-	2%

TABLE 2: Help Seeking Behaviour

HI/LO = 47%	HI/HI = 30%
LO/LO = 4%	LO/HI = 4%

TABLE 3: Access intensity matrix for all children in the sample (N=138) six months after the separation (15% had no access).

HI/LO = 37%	HI/HI = 33%
LO/LO = 13%	LO/HI = 7%

TABLE 4: Access intensity matrix for all children in the sample (N=138) at one year after the separation (10% had no access).

HI/LO = 22%	HI/HI = 40%
LO/LO = 20%	LO/HI = 11%

TABLE 5: Access intensity matrix for all children in the sample (N=138) at two years after the separation (7% had no access).

HI/LO = 15%	HI/HI = 51%
LO/LO = 14%	LO/HI = 10%

TABLE 6: Access intensity matrix for all children in the sample (N=115) at 3 years or more after the separation (10% had no access).

Type of change in access intensity over time	Percentage of the sample in this category N=70
1' Maintaining high frequency access	51.4%
Moving from low frequency access to high frequency access	2.9%
2' Moving from high frequency access to low frequency access	12.8%
Maintaining low frequency access	2.9%
3' Moving from no access to high frequency access	4.3%
Moving from no access to low frequency access	5.7%
4' Moving from high frequency access to no access	5.7%
Moving from low frequency access to no access	2.9%
5' Remainder of situations which could not be categorised as 1' - 4'	10.0%
No access ever	1.4%

TABLE 7: Overall change in access intensity over time

' Categories 1 through to 5 were used in the final analysis.

Style of Access	No Order Group		Consent Group		Judicial Group	
	At Sep.	2 yrs	At Sep.	2 yrs	At Sep.	2 yrs
Free	26%	30%	27%	-	32%	-
Regular-flex	47%	55%	31%	29%	32%	43%
Regular-rigid	-	-	12%	21%	32%	53%
Irregular	26%	15%	31%	42%	4%	4%

TABLE 8: Style of access for each group at separation and at two years.

STYLE OF ACCESS	No Order Group	Consent Group	Judicial Group
Free	20%	12%	-
Regular-Flex	65%	32%	45%
Regular-Rigid	-	12%	45%
Irregular	15%	44%	10%

TABLE 9: Style of access for each group overall.

Adolescents and divorce: The experience of family break-up

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The study of divorce can be seen as a paradigm of the study of a complex human problem with all the untidiness of real life. Early research used 'the broken family' as an independent variable, as if family structure in itself could explain differences in outcome for children. A growing body of research has shown that this is far too simplistic. There are many kinds of divorces, and many variables may influence the way in which a child responds. One cannot expect to find simple cause-effect relationships. Consequences are multiply determined. Some effects are subtle and emerge only after time has passed. Much depends on how the actors themselves perceive the situation.

But divorce is a subject that requires hard data. There is much concern about the increasing numbers of children who experience the break-up of their families. Last year in Australia alone this happened to 50,000 youngsters. Information is needed to guide decisions by judges, counsellors, teachers, and parents. Children also want to know what family disruption may mean for their own future.

There are many popular conceptions about the impact of divorce on children. The child from the broken home is believed to be more likely to be maladjusted, but how valid is this assumption? There is evidence to suggest that a child who is rejected by both parents, or who lives in an atmosphere of prolonged family conflict, is at risk (Rutter, 1971), but we do not know how many of the families who pass through the Family Court of Australia have children who experience these conditions. There is a great need for information about how divorce affects the ordinary family whose children do not inevitably find themselves in the clinician's waiting-room, or the juvenile court.

The necessity for obtaining a representative sample of divorcing families was brought home to us in discussions with counselling and judicial staff of the Family Court. By the nature of their work, Court staff are principally concerned with the problems of the least coping and most conflicted families. The question they continually face is - must it always be like this, or are there families 'out there' in the community where parents and children are making a success of divorce?

While there is a mounting literature on the effects of divorce on younger children, comparatively little is known about how adolescents cope with this experience. There are two recently published studies which include adolescents among their samples. Both are influential, and each represents a contrasting method of research.

Wallerstein and Kelly (1980) are psychoanalytic clinicians, and their method is based on the clinical case history. They studied 60 Californian families with 131 children of varying ages and followed them up over a five year period. Families were recruited by offering divorce counselling. Among their sample were 18 adolescents.

Psychoanalysis makes strong assumptions about adolescence. It is seen as a period of crisis through which the child gradually separates emotionally from parents, forming appropriate social and sexual ties beyond the family circle. The family is seen as playing a vital role during this process as the child oscillates between dependence and independence. It is also seen as important for parents to maintain strong generational boundaries, providing guidance and support while maintaining an authoritative parental role.

Wallerstein and Kelly found a high level of unhappiness among their adolescents. This was accompanied by feelings of anger, shame, embarrassment and anxiety over their own future. They attributed this to,

> 'The extraordinary cog-wheeling of the divorce-related changes in the parent-child relationship with those issues which cause adolescents intense concern in the normal course of events.'
>
> (op.cit.p.85)

Although their main focus was on developmental and age-related responses to divorce, Wallerstein and Kelly had no comparison group of intact families, so their inferences were based on theoretical and clinical grounds. Since divorce counselling was offered to their subjects, the sample has to be seen as a quasi-clinical one, and yet these findings have formed the basis of much of the current wisdom about adolescents in divorce.

Kurdek, Blisk and Siesky (1981) used a quantitative rather than a case-history approach in their study of 58 Ohio families recruited from the social club 'Parents without parnters'. They carried out structured interviews and administered standard measures to children and parents, and followed up a subsample two years later. The mean age of their sample was 13. Ages ranged from 8 to 17 and results are not reported separately, though older children were found to recover from the emotional aspect of divorce sooner than younger ones. The mean time since separation was four years at the first interview.

Overall these authors found that children had few divorce-related problems. They found that their 'feelings' and 'understanding' were not necessarily congruent and were rather weakly related to their global adjustment. A child could understand the reasons for a divorce, but still feel badly about it.

While Wallerstein and Kelly provide fine-grained descriptions of individual families and much rich ideographic information, but no measurements, Kurdek et al present careful quantitative analyses and profiles of the normative well-adjusted child - basically group data. Although both studies are longitudinal, neither test developmental effects against a non-divorced group of families.

The present study seeks to build on this previous research and to break new ground. We adopted a method that looks at the broad issues in a quantitative way, but also examines cases in the context of the family. We have included a comparison group of intact families. We also hope to follow up our sample over time.

Our present aim is to answer a series of questions,

- Are adolescents from divorcing families less well-adjusted than those from intact families?
- Does divorce affect boys differently from girls?

- What factors are related to adjustment within the divorcing families?
- How does divorce affect adolescent development?

METHOD

The Sample

1. The divorcing group comprised 40 families filing for divorce in the Sydney and Parramatta registries of the Family Court of Australia with children between the ages of 13 and 16 living in the greater metropolitan area. Since separation may be seen as a more critical event for children than divorce itself, it was important to control for the time that had elapsed since parents parted: this was set at a maximum of 30 months.

All families meeting the research criteria were sent an official letter by court authorities inviting them to take part. Only the spouse who made the application was contacted irrespective of where the child lived, and the researchers were given the names of only those who consented. No follow-up letters were sent. Approximately one half replied to the court, and 39 per cent of these accepted.

TABLE 1 in here

Because of the essentially voluntary nature of this sample great pains were taken to establish whether there were any systematic differences between those that agreed and those that did not. Court records are confidential, but Sophy Bordow, chief psychologist of the Family Court kindly examined them on our behalf.

Those that accepted were of rather higher social status and included fewer people of foreign birth, they were also more likely to have the adolescent living with them. Since family conflict has often been found to be associated with children's divorce adjustment we looked to see whether our sample had engaged in more or less divorce-related litigation than other families. It was found that they had been involved in significantly more disputes ($\bar{X} = 3.8$; d.f. = 1; $p < .05$). Most of these concerned property settlements; legal wrangles over custody and access are less common at adolescence than when children are younger.

This finding revealed that our families did not comprise an atypically cordial group of divorcing couples. The case histories also show much diversity within the sample.

The average age of the children was 15 years; parents had been separated for a mean of 18 months; and slightly more than half the fathers had blue collar occupations. A quarter of the children were living with their fathers.

TABLE 2 in here

2. Forty-one intact families recruited through five high schools chosen to represent a diversity of geographical and social environments comprised the comparison group.

TABLE 3 in here

One adolescent from each family and where possible both parents were interviewed independently at length using both standardised tests and free-response and projective material. In the present paper results from standardised measures of children's adjustment are presented, with demographic information from parents' interviews, and interview material from the adolescents. The focus is on the teenagers' point of view.

The Measures

1. Offer Self Image Questionnaire (OSIQ) (Offer, Ostrov and Howard, 1977, 1981). The OSIQ has been widely used with normal and disturbed adolescents in a number of countries. The authors conceptualise normal adolescent development as a multi-dimensional process, and the test provides eleven separate subscales. These can be grouped as five main sections:
   - (a) the psychological self, comprising the impulse control, emotional tone (stability) and body and self-image subscales.
   - (b) the social self, comprising social relationships, morals, and vocational and educational goals subscales.
   - (c) Sexual attitudes, which covers feelings, attitudes and behaviour towards opposite sex and towards own sexuality.
   - (d) Family relationships, including emotional atmosphere within the home.
   - (e) The coping self comprises mastery of the external world, psychopathology and superior adjustment (ego strength) subscales.

A total score can also be derived, which Offer describes as measuring psychological well being and adjustment. Australian norms exist.

2. Neuroticism Scale Questionnaire (NSQ) (Scheir and Cattell, 1961). The NSQ provides a total measure of neurotic tendency, and contains four subscales: *sensitivity, depression, submissiveness* and *anxiety*.

3. Langner Psychiatric Screening Scale (Langner, 1962). Langner suggests a cut-off point of four symptoms (of a possible 22) will identify 84.4 per cent of incapacitated members of a population, but only one per cent of the psychologically healthy. It has been used with Australian adolescents (Hennessy and Bruen, 1973).

4. School Adjustment Index. This was derived from interview questions which tapped the adolescent's feelings about school, perceptions of whether he or she was doing better or worse than a year ago, relationships with teachers and worries about schoolwork. (Details of the items are presented in Appendix 1).

5. Parent Bonding Inventory (PBI) (Parker, 1979). The above measures were included as indices of adolescent adjustment. The PBI was used to gauge the adolescents' perception of their relationships with each parent. Its scales measure parental *care* and *over-protection*.

TREATMENT OF RESULTS

In order to establish that the intact family adolescents were representative of a typical Australian population, a comparison with published norms was undertaken. No significant differences were found on OSIQ total score or subscales, nor on the Langner Scale. On the NSQ however (for which no Australian adolescent norms were available), the intact family children were significantly less neurotic (p < .05) than the U.S. adult normative population (Scheir and Cattell, 1961).

Within a sample of 40, it was naturally impossible to match children and families on all the variables that might be considered to influence adjustment to divorce. Accordingly, a series of one-way ANOVA was carried out comparing the intact and divorcing groups on 18 sociodemographic variables that the literature indicates may be relevant; ages of children and parents, number of children in the family, family living arrangements, social class, employment, economic situation, educational levels, religious affiliation and practice, country of birth, health of adolescent and parents, and adolescent's perception of each parent as 'caring' or 'overprotective' (Parker, 1979). Those variables which differentiated between the groups were correlated with each of the adjustment measures. Four were found to be related to adolescent adjustment: number of dependants, mother's health, father's care, and child's age. The oldest child had left home in more of the divorced families; more divorcing than still-married children considered their fathers to be less caring; and the intact family group were somewhat younger. These four variables were accordingly fitted as covariates in the subsequent MANOVA. When this was done it was found that none of the four contributed significantly to either sex or group differences, so the analysis was re-run without them.

1. Between Group Comparison: Are adolescents from divorcing families less well-adjusted than those from intact families? Does divorce affect boys differently from girls?

TABLE 4 in here

The MANOVA reveals no difference in adjustment between adolescents in intact and divorcing families, and no interaction between family type and child's sex. However, independent of group, boys are significantly better adjusted than girls ($p = .028$). Details of this main effect are presented in Figures 1, 2 and 3.

FIGURES 1, 2 and 3 in here

Discussion. This result throws into question the widespread belief that adolescents from seperated families are likely to be less well-adjusted than those from intact families. We have found a similar distribution of high and low scores in each group, with mean scores that are no different from that of the average Australian adolescent.

Our findings raise doubts about Wallerstein and Kelly's assumption that adolescence is a time of crisis, and that therefore the inter-meshing of divorce with this developmental phase increases the probability of psychological disturbance. For the divorced group as a whole, no such result was found.

The main finding that adolescent boys, irrespective of group are better adjusted than girls supports the known trend for the rate of disturbance to increase with age among girls, while it decreases among boys (Rutter, 1980). Since boys have often been found to be more adversely affected by family disturbance than girls (Rutter, 1974; Hetherington, Cox and Cox, 1979; Wallerstein and Kelly, 1980; and others) we had expected that we might find an interaction between family status and sex for children of this age. Studies of younger children suggest that where a father leaves the home a boy may experience his absence as rejection. He loses a male role model and companion, and as the mother becomes head of the family, discipline problems may ensue. The absence of a significant interaction effect in our data seems to indicate that these effects are less salient for adolescents, perhaps because of access to male peer groups and adult role models beyond the family.

It is worth noting, however, that there is a non-significant trend for divorcing family boys to score less well than other boys on the NSQ and Langner measures, while on the Langner scale girls show the opposite trend.

FIGURES 4 and 5 in here

The Family scale of the Offer questionnaire shows that both groups of adolescents feel positively about their mothers (90 per cent of the divorcing group, and 94 per cent of the intact children feel this way). Relationships with fathers are rather more distant for more children in each group (67 per cent and

77.5 per cent respectively). On the parent bonding measure significantly more divorcing children perceive their fathers as non-caring (F = 5.8, p = .018), but there are no differences in mother's care. The fact that most of our sample report a warm relationship with at least one parent may have acted as a buffer during the family break-up.

The 'between group' analysis has shown that as a group the teenagers from the divorcing families do not differ significantly from those whose parents are together. This is an encouraging finding. It is a tribute to the adaptability of these youngsters and does not support the pessimistic view that is so prevalent. But these are group results. Within each sample there are some who are functioning very well, and others who are more disturbed. We turn now to examine some factors that may explain why some of the divorced group adolescents have fared better than others.

2. Within Group Comparison: What factors are related to adolescent adjustment within the divorcing families?

To find out what factors are associated with adjustment within the group of divorcing families alone, we carried out a second MANOVA using the same adjustment measures as before, and five predictor variables. These were the sex of the child, the time in months since the parents parted, and three new variables derived by factor analysing structured items from the teenagers' interviews.

(a) Sex of adolescent. As already noted, younger boys have often been found to be more adversely affected by divorce than girls. In our first analysis we found that when the two groups were combined, adolescent boys were better adjusted than girls, but there were signs of a non-significant interaction effect on some measures. We therefore wished to look more closely at the relationship between sex and adjustment within the divorcing group.

(b) Time since parental separation. All families were interviewed within weeks of the divorce, and the mean time since separation was 18 months with a maximum of 30 months. There are indications that recovery from a major life event often takes about 18 months to two years and that separation rather than divorce itself is the period of maximum stress, especially for children (Smiley and Goldsmith, 1981). We therefore included a measure of the months that had elapsed since parents parted, in order to see if there was evidence of a time-linked process of recovery from crisis.

We wished to see whether adolescents' adjustment was related to different aspects of their experience of the divorce. Structured interview items, measured on Likert-type scales, were subjected to factor analysis. Three main factors accounted for 59.3 per cent of the variance.

TABLE 5 in here

Details of the items loading on each factor are presented in Appendix 2. These factors were included as the remaining three predictor variables in the within group MANOVA.

(c) Feelings. This variable concerns the child's emotional response to the divorce indicating the degree of sadness, shock, upset and disbelief experienced.

(d) Perception of conflict change. This taps the adolescent's attitude to the present family situation. Is there more or less conflict than before? Is the family happier or less happy?

(e) Positive acceptance. This variable reflects the degree to which the adolescent feels relief about the separation and does not want the parents to reunite.

A within group MANOVA was then performed, using as outcome variables the same 14 measures of adjustment as before, and fitting the five predictor variables described above in a regression analysis.

A significant relationship was found between the adolescents' perception of the family as happier and less conflictual since the separation and their overall adjustment (F = 1.61; d.f. = 70,46; p = .044).

Looking more closely at the relationship between the adolescents' perception of conflict change and each adjustment measure separately, we find that it is significantly related to the NSQ, a measure of anxiety and depression, (t = 2.83, p = .01), and to the index of school adjustment (t = 3.11, p = .005). No other predictors were found to be significantly related to adolescent adjustment.

Thus we find that the child who sees the family as happier and less conflictual after separation is significantly more likely to be less anxious and depressed, and to have a more positive attitude towards school than the child who perceives the family to be more unhappy than before, and who reports continued fighting at home.

Discussion. The main result appears to support the well-established finding that family conflict is associated with childrens' disturbance. It draws attention to the fact that conflict after separation continues to be linked with poor adjustment, and that unhappiness at home may spill over into negative school attitudes.

But one must also raise the question of the direction of these results. Does an unhappy home produce a poorly adjusted child, or does the child perceive the home (and school) in this way because of poor adjustment? Examination of the case histories reveals patterns which clearly suggest that continued family tension prevents the process of recovery, whereas teenagers thrive in an atmosphere from which high conflict has been removed. We return to this data later.

The strong relationship between family unhappiness and school adjustment is especially interesting. Teachers frequently comment on the poor school performance and behaviour problems of children from 'broken homes', and yet in the first MANOVA we found no overall difference between intact and separated families in this respect. Our present findings show that among the divorcing families it is the children who are still experiencing family unhappiness who have poor school adjustment, while those who perceive the family as less conflictual now have more positive attitudes towards school.

The interviews show that some children had gone through a bad period at school when the family was in crisis, but had settled down again. On the other hand a girl whose parents were still engaged in bitter conflict expresses her pervasive distress when she cites as one of her main difficulties,

> 'Not doing badly at school because you're worried about things at home.'

It seems, then, that family disturbance may manifest itself in school disruption, but that for many adolescents this may be a transitory phase during the most stressful stage of family break-up. Parents are often anxious that their children may become labelled as misfits because they come from broken homes. Our findings emphasize the importance of distinguishing between those children who are in need of support because of family unhappiness - either long-term or transitory - and those who have recovered. As Wallerstein and Kelly comment (op, cit., p.284), adolescents seen in the school setting as failures and disruptive and stereotyped as products of 'broken homes' are not typical of the majority of children of divorce.

The two factors of feelings and positive acceptance are conceptually rather similar to those described by Kurdek, Blisk and Siesky (1981) and, like theirs, tap emotional and cognitive responses, though our 'acceptance' also contains an element of 'relief'. Like these authors, we found the two dimensions to be independent, but we found also that neither was related to adolescent adjustment. Teenagers respond to the divorce according to the circumstances, some are sad and some are relieved, and some feel both emotions. A negative or positive response is not in itself indicative of psychological adjustment.

Sex of adolescent. It is interesting to find no difference between the adjustment scores of boys and girls within the divorcing group. The advantage enjoyed by adolescent boys when both groups were combined in the first analysis has disappeared among the divorcing families. Thus family break-up may after all have been experienced rather more negatively by boys than girls, although at adolescence boys do not appear to suffer the marked deficits observed by other writers with younger boys (Hetherington, Cox and Cox, 1979; Rutter, 1971, 1974; Wallerstein and Kelly, 1980).

Time since parental separation. We found no relationship between months since separation and children's adjustment. When we looked at the case history data, however, we found that six families had remained 'separated under the same roof' for all or part of the twelve months' separation required by the Family Law Act (1975) before a divorce can be granted. This arrangement is permitted under the Act, provided there is no co-habitation. Our measure, therefore, had confounded legal and psychological separation, which turned out to be very different matters. Recovery from crisis could not take place under these circumstances.

The 'within group' analysis has shown that adolescents respond favourably once family tension is removed, but that when they experience conflict and unhappiness after separation they are significantly more likely to be anxious and depressed and to feel antagonistic towards school.

3. Qualitative Analysis of Interview Data

We turn now to examine the experience of the adolescents as they relate it in their interviews. First we report data which aid the interpretation of the statistical findings; then we examine how divorce affects adolescent development.

(a) Interpretation of quantitative findings.

The statistical analysis showed that family unhappiness after separation was associated with adolescent disturbance, but from this one could not specify with certainty the direction of the relationship. On looking at the case histories we find patterns which throw light on this result.

A small group of teenagers had had very difficult family situations ranging from violence and alcoholism to incest. One cannot tell what the longer term effects of these experiences may be, but at the time of the interview these adolescents expressed enormous relief that the marriage had ended and none had abnormal adjustment scores.

Robert (aged 16) talks of the 'nightmare and burden' before his mother discovered the existence of an incestuous relationship between himself and his father. He says,

> 'I didn't want to hurt Mum, and in that way I didn't want a separation, but I was relieved when it happened. I worry

> about her - how she's coped with it - because she's lost a husband.'

Robert lives away from home with friends whose parents have also divorced, but he values his family and the open communication he has with his mother.

> 'I can discuss mostly anything with her. I think it's great that she trusts me enough to talk about her problems too.'

Robert's scores on the adjustment measures are well within normal limits. By contrast Felicity, 14, has elevated scores on all the measures. She is one of the six teenagers whose parents elected to live separately but under the same roof during the separation. Much research has shown that living with high parental conflict is damaging to children. The atmosphere after a separation has occurred and before the divorce is granted can be explosive. Five of these adolescents had abnormal adjustment scores.

At first Felicity thought that after her parents had moved into separate rooms things would be better,

> 'But they're still fighting because they're still under one roof... about petty things like the soap powder...'

She describes how the atmosphere of conflict has affected her relationship with her brother,

> 'Alan and I have become more apart, more angry with each other. I think we've taken over the same roles without realising it. Mum tries to get us to see her side of the story and Dad tries to get us to see his. It's not an objective point of view any more. I just try to figure it out myself.'

She feels that the divorce has made her grow up more quickly because it has made her think about the future more,

> 'I worry about that in a way. I don't want my marriage to break down.'

She tries to maintain a relationship with each parent, but the tension makes this very difficult. At one stage she ran away from home. Her advice to other parents about to separate is unambiguous,

> 'Don't live under one roof. And try to see as much of the children equally as you can.'

The patterns revealed by these and other case histories help us to understand the meaning of the statistical results. They explain why the time elapsed since legal separation did not predict adolescent adjustment although it appears that a process of recovery from crisis has been taking place in families which are happier since the parents parted.

These patterns clearly suggest that continued family tension - whether under the same roof or not - is implicated in adolescent maladjustment, but that children respond with remarkable resilience when the source of tension is removed.

(b) How does divorce affect adolescent adjustment?

We turn now to one of the central aims of the research, the question of how divorce interacts with the developmental stage of adolescence.

As the children themselves acknowledge in their interviews, it is hard to disentangle the normal developmental process from the consequences of divorce. In both groups teenagers are conscious of increasing maturity, greater responsibilities, and changes in their relationship with parents.

While clearly there are dangers that an adolescent may be forced too rapidly into adult responsibilities, or may find a divorcing parent's emotional investment burdensome or restrictive, it seems that Wallerstein and Kelly (1980) have tended to over-emphasize the negative aspect of the conjunction of these events. The essentially clinical nature of their sample and the absence of a comparison group may have led them to these conclusions while obscuring the real coping strengths that this stage of development provides.

Our main findings show no difference in adjustment between adolescents from intact and separated families. If divorce interacted with adolescent development and disrupted it as severely as Wallerstein and Kelly suggest, one would expect to find significantly poorer adjustment among these children.

Wallerstein and Kelly point out that divorce may accelerate the normal process of individuating parents and separating emotionally from the family. Their fear is that this process may be too sudden and too rapid. We would argue that precisely because these processes are part of adolescence, teenagers can use them in coping with separation. In both groups children are pushing for independence. Parents in the intact group however seem more anxious about how much freedom to give and how soon. In the divorcing group independence conflicts often seem to resolve themselves as relationships with parents change. Over half these adolescents report having no problems over independence struggles with parents compared with 34 per cent from the dual parent homes.

We asked the divorced group children what had been the biggest change brought about by the separation. We expected rather concrete replies, but the most common categories concerned maturity issues. They saw themselves as having more freedom and independence, a more equal relationship with the custodial parent and more responsibility. A typical comment was,

> 'More freedom. Mum thinks of me as more mature, can accept what I do. Independence. It's great!'

It does not follow that a changed relationship with parents is associated with greater emotional distance. Many of our sample commented that as they had gained more independence they had also achieved a better relationship with one, or both, parents - closer, more equal and with better communication.

Wallerstein and Kelly are concerned that generational boundaries should be maintained, but this seems to ignore the cognitive aspect of adolescence. As a child's understanding increases it seems both understandable, and desirable, that the relationship should become more equal. This does not mean that parents abandon their responsibilities, but that their style of parenting takes account of the increasing maturity and understanding of the teenager.

Adolescents are rarely involved in court disputes concerning custody and access. Until recently 14 was the age at which a judge must take a child's wishes into account, though this has recently been extended to include younger children. None of our adolescents had been the subject of a fully defended case. Eighty-nine per cent said they were happy about the arrangements that had been made.

Many found open access the most satisfactory way of keeping in touch with both parents. Adolescents enjoy the advantage of being able to take themselves around the city. They are less dependent on adults' arrangements and like to fit in visits to suit their own activities. Many preferred to live with the parent who stayed in the matrimonial home. This minimized interruption to their school and social life. It also served the important function of saving them from having to choose between their parents, a defence which those who deal with children in divorce should be careful not to destroy.

Because adolescents are moving out into the world they have far more resources at their disposal than young children. They have friends of both sexes and they have access to adults beyond the family circle. They also have greater competence and mobility. The family and its troubles are not their whole world.

I do not want to paint an unrealistically optimistic picture. Clearly divorce is a disturbing and sad experience for most children. For many it had brought disenchantment, a sobering view of the realities of life and anxiety about their own future. A fifteen year old girl commented,

> 'Mentally I feel I'm more mature and advanced than a lot of my friends because you have to understand life more. I now know life and marriage isn't 'happy ever after' and it may or may not work.'

Some chldren had taken on onerous responsibilities. Pam, aged 16, describes her mother as,

> 'Going through the middle age syndrome. Total confusion!'

Mrs. X had taken up with an alcoholic boyfriend after the separation. Pam comments,

> 'He was creepy. We had the same policeman each time he crashed through the door. We used to laugh with the policeman - but it wasn't funny really... I worried that I'd come home and find Mum stabbed and bloody in the flat... I sometimes feel responsible for her, but it's not my business.'

This girl had left school and was 'bringing home the bread' until her mother could find a job.

Friends were the primary source of support for many at the height of the separation. Mary describes how she misses the large family she grew up in,

> 'On Christmas eve I really broke. I went out with friends and we were all at someone's house and I suddenly felt just how much we were missing. Christmas is a time for all the family to be together - we used to have such happy times once. My boyfriend was wonderful. He helped me then.'

Rather more of the divorcing group were sexually experienced though this may have been partly a function of their wider age range. Many expressed anxiety lest their future marriage should also fail. Brett, aged 15, said,

> 'I'm a lot more determined to do things, I suppose, job-wise, career. To make sure I don't get a divorce - that it doesn't happen to me... when I get married I'd make sure I'd picked the right person - be able to support a family... not make a failure...'

The overall impression that emerges is of the remarkable courage and resilience of these children and their often sophisticated understanding of their parents' problems. At this age their need to understand the reasons for the divorce, and their appreciation of parents who explain things clearly is very marked.

Typical advice to other children of divorce illustrates this capacity and need,

> 'Try to understand both sides. Try to find an understanding in it, because there's a reason why the whole thing happened. Try to think of them and their life and not what you're missing out on.'
>
> 'Sort of put yourself in your parents' position and see what they would think and do...'
>
> 'Give parents support - parents are hurting too. Don't expect parents to be perfect.'

It seems that divorce does interact with the developmental stage of adolescence in a rather remarkable way as Wallerstein and Kelly point out. But contrary to their view, we have seen that this meshing of adolescence and divorce provides the average youngster with particular coping strengths.

While divorce may cause teenagers to grow up a little faster (Weiss, 1979), it is clear that similar processes are occurring in intact families too.

Conclusion

For most teenagers their parents' separation is a sad and often anxious time, but our data suggest that 'out there' there are many families who cope successfully with this major life event. The disturbed child is far more visible than the adolescent who copes well. Perhaps this is the reason for the widespread image of the maladjusted child from the 'broken home'.

We do not want to imply that there are no consequences for children of such a major disruption to their lives. Adolescents themselves often feel that it has hastened the process of growing up and given them a less rosy and more realistic view of the adult world. There is also some evidence of concern about their own future relationships, for most of them value family life highly and want to make a success of their own marriages.

Adolescents, like adults, may go through a difficult time during the period of separation. They need support during this crisis. But, given a good relationship with at least one parent and a situation that is happier and less conflictual following separation, a process of recovery and family re-structuring occurs. Continued conflict, and competing demands for the loyalty of the adolescent prevent recovery from taking place. Prolonged stress of this nature is associated with marked psychological disturbance in the child. For this reason we believe that 'separation under the same roof' has the potentiality to be very damaging.

Adults who are involved with adolescents in divorce might be best able to help them by recognizing their develomental capacities and treating them seriously as people whose lives are deeply affected and who need to understand the reasons for and consequences of this event.

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TABLE 1

Response Rate of Court Sample

Total Letters Sent by Court	No Reply		Refused		Accepted	
	n	%	n	%	n	%
262	142	(54.2)	73	(27.9)	47	(17.9)

(Cases not meeting research criteria were discarded.)

TABLE 2

The Sample

	Families	
	Divorcing	Intact
Social Class		
Middle	18	19
Working	22	22
Sex of Child		
Boy	18	19
Girl	22	22
Age of Child ($\bar{X}$)	15 years	14.34 years

TABLE 3

Composition of Voluntary High School Sample

School	n	%
Leumeah High School	18	16.36
Mosman High School	17	15.46
Narrabeen High School	6	5.46
Arthur Phillip High School, Parramatta	5	4.55
Rooty Hill High School	13	11.82
Ryde High School	10	9.10
St. Ives High School	24	21.82
Strathfield South High School	17	15.46
Total	110	100

(41 cases were randomly selected within a sampling frame designed to match the S.E.S. composition of the Court sample.)

TABLE 4

Adolescent Adjustment In Intact Vs Divorcing Families Manova With OSIQ, MSQ, Langner Scale and School Adjustment Index As Outcome Measures

	F	d.f.	Sig. of F
Group	1.25	14,50	.275
Sex	2.11	14,50	.028
Group X Sex	0.49	14,50	.928

TABLE 5

Factor Analysis Of Adolescents' Interview Responses

Factor	1	2	3
Title	'Feelings'	'Perception of Conflict Change'	'Positive Acceptance'
Eigen-value	6.90	2.97	2.32
% Variance	33.6	14.4	11.3

FIGURE 1. N.S.Q. MEAN SCORES FOR BOYS AND GIRLS
(Lower score = better adjustment)

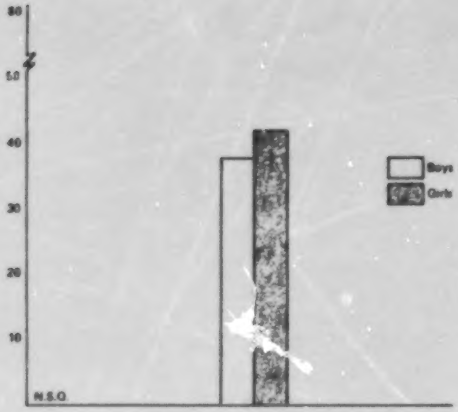
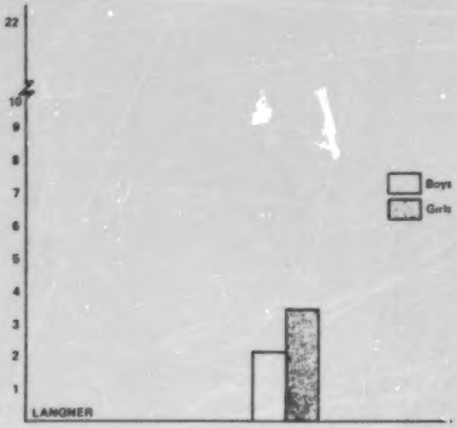


FIGURE 2. LANGNER MEAN SCORES FOR BOYS AND GIRLS
(Lower score = better adjustment)



Divorcing and intact family groups combined : boys vs girls

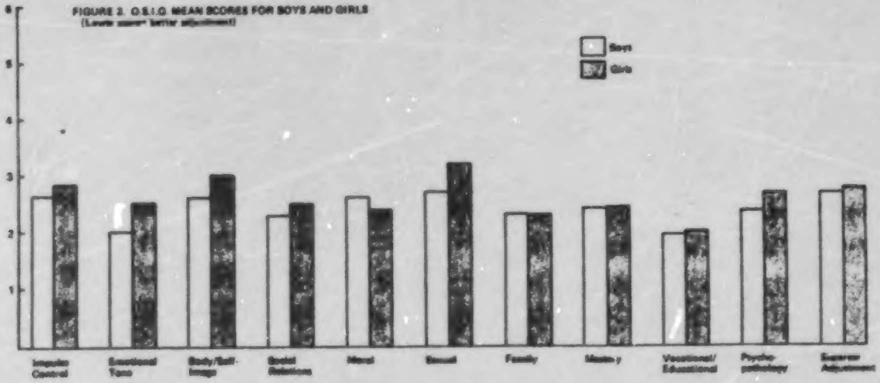


FIGURE 2. O.S.I.Q. MEAN SCORES FOR BOYS AND GIRLS
(Lower score= better adjustment)

Divorcing and intact family groups combined : boys vs girls

FIGURE 4. N.S.Q.: MEAN SCORES OF DIVORCING AND INTACT FAMILY BOYS AND GIRLS
(Lower score = better adjustment)

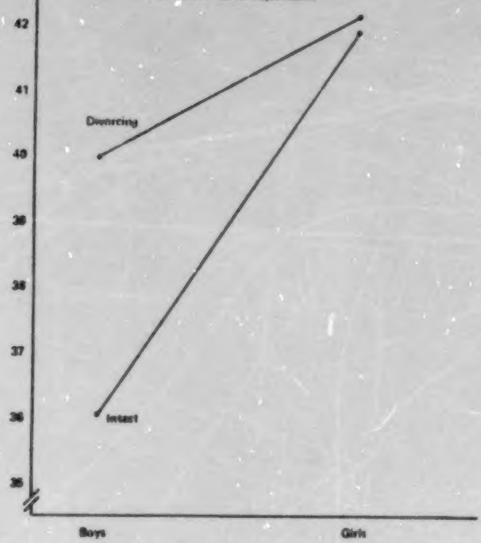
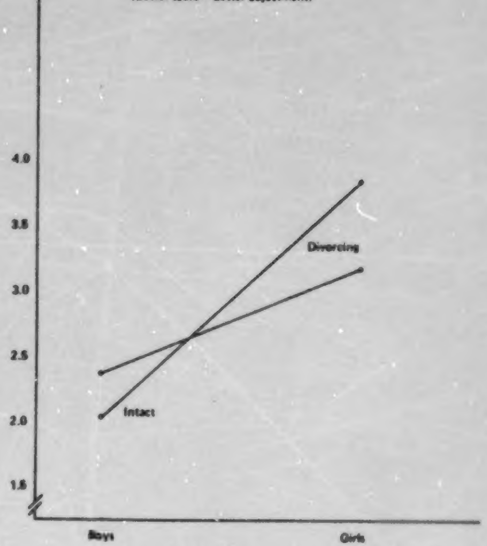


FIGURE 5. LANGNER SCALE: MEAN SCORES OF DIVORCING AND INTACT FAMILY BOYS AND GIRLS
(Lower score = better adjustment)



Non-significant interaction effect : group X sex

APPENDIX 1.

Interview Items Comprising School Adjustment Index

- How do you feel about school on the whole; do you like school very much; O.K.; some ports O.K., others not much; not much; hate it?
- Are you interested in school work? yes, very much; yes, O.K.; boring; hate it.
- Do you think you are doing (in your school-work) better; worse; or about the same as one year ago?
- Do you get on well with the teachers you have at your school? all of the teachers; most of them; some of them; none of them?
- Could you talk about personal problems with them? all; most; some; none?
- Is school-work a problem for you? Tell me if it is a major worry; quite a problem; a little worrying; no problem.

APPENDIX 2.

Factor Analysis: Principal Items And Their Loadings (> .50)

Factor 1: 'Feelings' **Eigen-value: 6.90** **% of variance: 33.6**

Item	Scale	Loading
* Sad	(very strongly; fairly strongly; little bit; not at all)	.84
* Shocked	"	.80
* Can't believe it	"	.75
* Upset at first, but now O.K.	"	.66
Don't care	"	.56
* Refuse to accept it	"	.66

Factor 2: 'Perception of Conflict Change'.Eigen-value: 2.97;% Var.: 14.4

Item	Scale	Loading
* Family less happy than before separation	(three point scale)	.88
Not much family fighting since separation	"	.77
Overall, things are better since separation	"	.74
Family very happy at present	"	.68
Less tension/fighting in the family	"	.57
(Less fighting since the separation than before)	"	(.35)

Factor 3: 'Positive Acceptance'. Eigen-value: 2.32; % of Variance: 11.3

Item	Scale	Loading
* Would you like your parents to get back together again?	(yes; no)	.73
Relieved	(four point scale)	.67
* Want parents to reunite	"	.67
Glad	"	.63
Family happier now	(three point scale)	.58

(Starred items were reversed to provide consistent keying.)

Children's wishes and legal outcomes: Is there a relationship?

Irene Thomas & Tony Pietropiccolo
Family Court of Australia

1. INTRODUCTION

Reports on the wishes of children as to their preferred custodial parent may be ordered by Judges, Magistrates and Registrars having jurisdiction in the area of Family Law (See Appendix 1 for Glossary of Terms).

Usually, Court Counsellors are requested to prepare these reports. Counsellors in the West Australian Family Court, as a rule, interview children individually and privately about their wishes. The interviews may take place in the children's homes, the Counsellor's office, or in both. Their wishes are made known to the Court by means of an oral or written report (the latter being the form mostly used). The parents of the children, and their solicitors, are given copies but only after a Judge has viewed the report and consented to its distribution (see Appendix 2).

There is no known research that has addressed such questions as; Is the energy and time spent on obtaining children's wishes justified in terms of their value in the decision-making process?; is the stress of being interviewed, evident in some children, balanced by any benefit obtained by these children in expressing their wish?; does interviewing the child in the home, office, or home and office, make any difference to the type of wish expressed or the use made of these wishes when custody is being determined?; does age, and/or sex, and/or which parent the child lives with have any bearing on the weight given to a child's wish in a custody decision?

In the main case law is very unclear as to the significance of a child's wish in contested custody decisions. However, it is consistent in its assertion that the importance to be attached to a child's expressed preference as to his custodial parent, is left to the discretion of the Judge hearing the case (Melton, 1982). S[illegible]off (1976/77), contends that the wide discretionary powers of the Judge strips children's wishes of their importance in custody decisions.

The importance given to a child's wish in most contested custody decisions is determined by what the Judge considers to be in the overall best interests of the child. A child's perceived ability to make an intelligent choice, undue parental influence, the intensity with which the desire is held, the reasons for the wish expressed (Siegel & Hurley, 1977); his/her chronological age (Family Law Act 1975, S.64(1)(b); Buckley, 1978); the maturity of the child, the nature of the competing claims for custody (B.B.T. & J.M.T., 1980) are all factors which may have a direct bearing on the weight given to a child's wish in a custody dispute. Whether or not the custody decision arrived at by the Court follows the expressed wish of the child may be influenced by such considerations as the sex of the parent (Horwill, 1983); the retention of existing arrangements (Eekelaar et al., 1977); and the parents' personality, moral character, parenting ability and ability to provide (Lowery, 1982). In seeking to establish which factors are considered most important by the judiciary when determining custody, Lowery (op. cit.), found that children's wishes were only a minor consideration.

A majority of custody decisions (64%) are made by consent (Horwill, 1979). What weight a child's custodial preference receives from parents is an area that does not appear to have been researched. However, a study by Marschall and Gatz (1975) seemed to indicate that the criteria used by parents in making custody decisions were almost the same as those employed by the judiciary. If this is true, it may be that the consideration given to children's wishes by their parents' is similar to that found among Judges as reported, by Lowery, in the above-mentioned study.

There is much debate among professionals working in the area as to the need for, purpose and appropriateness of, children's wishes in custody decisions. Some feel that children's wishes ought not to be sought as these have little value in and of themselves (Marshall et al., 1980; Millikan, 1982). Others accept that children's wishes play a part in the adults' decision-making process but this is conditional and relative to other factors (Reynold -v- Reynold, 1973; B.B.T. & J.M.T., 1980; Buckley, op. cit., Gaylin, 1982; Bersoff, op. cit.). Theories of cognitive development (Piaget, 1977; Kohlberg, 1975) are often used to support these arguments for the limited and conditional use of children's wishes in custody decisions. A further view is that children's wishes ought to be given far greater respect than they have received to date and that children need to play a more active role in the making of decisions that directly affect them (Melton, op. cit., Flock, 1983; Wringe, 1981). Jenkins (1977) states that children have an ability to perceive the more caring parent. This is distinct from their intellectual capacity to make reasonable decisions (Duncan & Duncan, 1979). To date, research on the capacity of children to make mature decisions is largely inconclusive (Waters & Dimock, 1983). Guyer et al. (1982) suggest that long held assumptions that children lack the capacity to make decisions, unless they can prove otherwise, should be questioned. They feel there is a need for research to seek new directions in this area.

There is no apparent research that has attempted to examine the relationship between a child's expressed wish and the custody decision that follows. The study reported here, which is one aspect of a larger research project, is an initial attempt at providing some empirical data in this area.

It was expected that the data obtained would demonstrate that: A relationship existed between the child's expressed wish and the custodial decision (the very nature of the research design made this inevitable); the older the child was, the greater the likelihood of a positive correlation between the child's expressed wish and the custodial decision; the sex of the child would not significantly affect the expressed wish and custodial decision relationship; those children expressing a wish to change custodial parent would have their wishes met less frequently than those who wanted to stay where they were; the place of interview would have no significant influence on the relationship between the wish expressed and the custodial decision.

2. THE STUDY

2.1 Source of Research Sample

In 1980 and 1981, a total of 283 Welfare Reports in relation to custody were ordered by Judges and Magistrates in Western Australia. These reports were compiled by 12 Western Australian Family Court Counsellors. During this period, there were 6 female and 6 male Counsellors. Their ages ranged from 25 to 48 years and all had tertiary qualifications in the Social Sciences.

The number of completed reports represented 7.8% of the total number of custody applications filed during those years. The criterion for including a Welfare Report in the study was that the court order for a report included an item requiring the wishes of the child as to his/her custodial parent. This criterion was met by 192 of the 283 reports.

2.2 Sample Population

The sample population consisted of 385 children. The criteria for the inclusion of a child within the study was-

(i) that the child was the subject of the ordered report,

(ii) that he/she was interviewed about custodial wishes by a Court Counsellor, and

(iii) that he/she was residing with a parent.

Of these children, 97 were excluded: 58 as they did not express a custodial preference: 22 because they could not be followed up as to their outcome: 10 because their parents reconciled: 5 because one parent died. Thus the study sample consisted of 290 children.

2.3 Methodology

(a) The 192 Welfare Reports were systematically examined and the information extracted about each child was:-

(i) the child's expressed custodial wish,

(ii) the age of the child,

(iii) the sex of the child,

(iv) the place where the child was interviewed,

(v) the parent with whom the child resided.

(See Appendix 3 for the coding of variables.)

(b) The following information was extracted from the corresponding Court files:-

(i) the legal process by which the decision was derived,

(ii) whether the decision was made by consent,

(iii) whether the decision was or was not in accordance with the expressed wish of the child.

3. ANALYSIS OF DATA

The design of this study can be classified as "Quantitative-Descriptive" (Tripodi et al., 1976). The frequencies obtained were cross-tabulated and used to measure the relationship between variables. The chi-square non-parametric statistical method was used to analyse the results. These were accepted as being significant if $p < .05$.

The data in the study are presented in sections as follows:-

(i) Demographic Information,
(ii) Process Information,
(iii) Outcome Information,
(iv) Cross-tabulation between variables.

3.1 Demographic Information

(a) Age and Sex Distribution

FIGURE 1 in here

As can be seen from Figure 1 the vast majority of children in the study sample are aged between 6 and 15 years. These age groups are over represented when compared to the Western Australian population statistics. The 0 - 5 and 16 - 18 year age groups are under-represented. These findings are similar to those of Horwill (1983).

Overall, the sample consisted of 60.3% male and 39.7% female. This is 9% more boys than in the Western Australian population under 18 years (51.3%) and 9% less girls (48.7%). Horwill (1979) reported similar results.

(b) Distribution of Children's Age, Sex and Sex of Parent with whom they Lived

FIGURE 2 in here

There were slightly more children living with their mother, 52.4% (152) than with their father, 47.6% (138). In the 6 - 11 age category there was a higher percentage of both males and females living with their mother. In the 12 - 15 age group this was reversed.

3.2 Process Information

(a) Child's Expressed Wish

The vast majority of children in the sample study, 82.4%, expressed a wish to remain living with their present parent. The other 17.6% expressed a wish to move to live with the other parent. Lutzyk (1979) reported a similar result.

(b) Place of Interview

The majority of interviews, 59.7% were conducted in the home, 36.9% were held in the office and the remaining 3.4% in the home and office.

(c) Legal Process Used

The 290 cases proceeded to resolution through the following legal processes:-

58 (20%) went to Trial
24 (8.3%) went to Hearing
101 (34.8%) went to Pre-trial Conference
107 (36.9%) went to Other

Overall, consent orders accounted for 71.7% of all cases. This finding is similar to Horwill's (1979) study.

3.3 Outcome Information

TABLE 1 in here

Table 1 clearly shows that the majority of children (89%) had a decision made in accordance with their wish.

3.4 Cross-Tabulation Between Variables

A number of relationships were tested in order to ascertain what variables may be associated to legal outcome.

(a) Decision by Child's Expressed Wish

TABLE 2 in here

These results suggest that there is a very strong relationship ($p < .0000$) between the wishes a child expresses and the resultant legal decision. For those children expressing a wish to remain where they were the decision was in accordance with their wish 93.7% of the time. Of those children who expressed a desire to move the decision was in accordance with their wish 66.7% of the time.

(b) Decision by Legal Process Used

TABLE 3 in here

This relationship was found not to be significant. Thus it appears that the legal course taken does not have a significant impact on whether the decision was, or was not, in accordance with the child's expressed wish.

(c) Child's Expressed Wish by Decision by Legal Process Used

TABLE 4 in here

TABLE 5 in here

When the wish expressed is cross-tabulated with decision, controlling for legal process, a highly significant result for the Trial Category ($p < .001$) and a significance of $p < .04$ for the Pre-trial Conference category was obtained. The results indicate that if a child expressed a wish to move, and the case proceeded to a Pre-trial Conference, the decision was more likely to be made in accordance with the child's wish than if it proceeded to Trial. No such difference was found if the child expressed a wish to remain where he/she was living. The data obtained in the "Other" category, although not significant ($p < .06$), demonstrated a similar trend to the Pre-trial Conference results. Support for the above findings were found in the results from a cross-tabulation of wish expressed by decision, controlling for consent ($p < .002$).

(d) Decision by Age

TABLE 6 in here

A significant association of $p < .005$ was found between the decision and the age of the child.

TABLE 7 in here

Separate statistics were computed for age categories 6 - 15 years as these comprised 94.2% of the sample. As can be seen in Table 7, when decision by age was cross-tabulated for the 6 - 15 age categories, a highly significant result was found ($p < .001$). Here it appears that if a decision is made that is not in accordance with a child's wish, the child is most likely to be in the 6 - 11 age category. When a cross-tabulation of decision by age (6 - 15 years) controlling for the "change" category was computed a significance of $p < .05$ was found. In the 6 - 11 age group, it seems that, if a child expresses a wish to change he/she is less likely to have his/her wish met than children in the 12 - 15 age group.

(e) Age by Decision by Consent

A cross-tabulation of age of child by decision controlling for consent yielded a $p > .05$ for both consent and "no" consent categories. This suggests that the consent and non-consent legal avenues do not significantly affect the wish/decision relationship.

(f) Decision by Parent Child Lived With

TABLE 8 in here

The parent the child lives with was found not to be significantly related ($p < .78$) to the decision made. This suggests that the sex of the parent does not significantly influence whether the decision is in accordance with the child's wish or not.

(g) Child's Expressed Wish by Decision by Parent Child Lived With

TABLE 9 in here

TABLE 10 in here

We have already seen in Table 2 that a very strong relationship exists between wish expressed and decision. When the parent the child lived with was added significant results were obtained for both mother ($p < .0001$) and father ($p < .002$). It is believed that the significances obtained here are due to the large numbers of children falling into the "no change" category and having their wish met. This was confirmed by an examination of the relevant tables. Consequently, the results demonstrate that the relationship found in Table 2 is not significantly affected by which parent the child lives with.

(h) Decision by Sex

TABLE 11 in here

No significant association ($p < .2$) was found between the sex of a child and the nature of the decision. This suggests that sex does not significantly affect the decision. The results obtained when sex was introduced to a cross-tabulation of the child's expressed wish by decision confirmed this. The significances obtained for both males and females were $p < .006$. These significances were felt not to affect the child's expressed wish by decision relationship for similar reasons to those stated about Tables 9 and 10.

(i) Decision by Place of Interview

TABLE 12 in here

A significant relationship was found to exist between place of interview and decision. This relationship, as seen in Table 12, was highly significant ($p < .0002$). We believe this relationship to be spurious and suggest that age could account for the association. Support for this suggestion is to be found in the fact that of those children interviewed in the home 58% of them fell within the 6 - 11 age category. This was the age category most likely to express a wish to move and the category most likely not to have their wish complied with. This is further supported by a cross-tabulation of decision by place of interview controlling for age. Here a significance of $p < .000$ level was found only for the 6 - 11 age group.

(j) Child's Expressed Wish by Decision by Place of Interview

TABLE 13 in here

Results of this cross-tabulation produced a significance of p <.0000 level for the "home" category only. Table 13 shows that when children were interviewed in the home the results were similar to those obtained when the decision was cross-tabulated with the child's expressed wish (Table 2). Thus, these results demonstrate that the decision/wish relationship is not significantly affected if the child is interviewed in the home.

TABLE 14 in here

Frequencies in the above table were found to be not significant (p <.38). However, a visual inspection of the cross-tabulation in Table 14 when compared to the cross-tabulation in Table 2 revealed that the difference appeared to be in the "change" category. The difference in the "change" categories in Tables 13 and 14 was found to be significant at the p <.05 level. This suggests that the impact on the decision/wish relationship may again be due to children in the 6 - 11 age category for reasons already explained above.

The results for the "home/office" category were not significant ($p < .1$). When the frequencies in this category were compared to those found in Table 13 and 14 a significant result ($p < .05$) was again obtained in the "change" classification.

4. DISCUSSION

The results relate to children whose parents were disputing custody and whose expressed wishes were obtained by means of a Court ordered report. The fact that reports regarding children's custodial wishes were ordered in only 5.3% of all custody applications by the West Australian Family Court, indicates that these cases may not be representative of custody disputes in general.

Figure 1 shows that children in the study sample younger than 6 years and older than 15 years are under represented when compared to the general West Australian child population. This is similar to Horwill's (1983) findings. There are a number of possible explanations for this: fewer parents separate when there are pre-schoolers in the home (Cherlin, 1977); there is less likelihood of custody disputes over small children (Horwill, 1983); the Court would be reluctant to seek the wishes of a pre-schooler because of their perceived lack of cognitive and verbal ability; counsellors may feel uncomfortable interviewing pre-school children about their custodial wishes; the dearth of valid and reliable non-verbal techniques through which the wishes of pre-school children may be obtained; parents are unlikely to dispute custody of children 16 years and over as these children would largely determine who they wanted to live with and there may be less custodial disputes over older children as Court decisions, in the majority of cases, would have to follow the expressed wish of the child (S.64(1)(b), Family Law Act, 1975).

It is interesting to note that in the study sample there was a relatively even distribution between the number of children living with their father (47.6%) and those living with their mother (52.4%). From the distribution it appears that the wishes of children in the 6 - 11 age group are sought slightly more often if they are living with their mother than with their father. The reverse is true with the 12 - 15 age group (See Figure 2).

A possible explanation as to why a greater number of children in the 12 - 15 age group live with their father than with their mother is that fathers may be more likely to pursue their custody application if the child is older and living with them. They may feel that they have a greater chance of obtaining custody in these circumstances. Their application would have the support of the "status quo" and the increased importance given to older children's custodial wishes.

The findings show that Counsellors interview children in their home much more often than in the Counsellor's office. Counsellors may feel that children are more at ease in their home environment and because of this are more likely to openly express a custodial wish. A significant relationship was obtained when place of interview was cross-tabulated with the custodial decisions. However, as already stated in presenting the results, we feel that the significance obtained was primarily due to the age variable. The relationship between the child's wish and the decision made was analysed in terms of place of interview. An examination of the results revealed that the effect of place of interview on the wish-decision relationship could be attributed to the "change" variable. Thus it is still believed that place of interview has no significant influence on the relationship between decision and wish. Further research is needed to clarify this particular aspect of the study.

The results presented in Table 1 show that 89% of custodial decisions, followed the expressed wish of the child. Table 2 - supports our expectation that the custodial decision in most instances would agree with the child's preference if the child did not desire a change.

It is unlikely that the strong positive relationship between the wish expressed and the decision made is due to a cause-effect relationship. The wide discretionary powers which the judiciary have in determining the weight given to a child's wish, and the lack of recognition of children's rights within the wider community (Wringe, op. cit.), makes it unlikely that custodial decisions are, in the main, determined by children's wishes. However, it is possible that children's wishes, once known by the adult, may, in a subtle way, affect the adult's decision-making process. An example of this is to be found in a judgment where the Judge firstly states that the children's wishes were only a minor consideration in his custodial decision but goes on to say:-

> ".....it gives me some comfort to know that the decision which I have arrived at is one which they (the children) will support". (B.B.T. & J.M.T., 1980, pp. 75-105).

There is some evidence in the data to support the contention that the maintenance of existing arrangements could be the single most important factor in the decision-wish relationship. Previous research (Eekelaar et al., op. cit.) has shown that custodial decisions, in the majority of cases, maintain the "status quo". Of the children represented in Table 2, 82.4% of them did not wish to change their custodial arrangements. Of these, 93.7% had their wish complied with. Of all the custodial decisions, it was found that the "status quo" was maintained in 83.1% of cases. However, it is possible that a number of other variables may contribute to the high correlation found between children's wishes and custodial decisions. Further research is needed to identify these variables.

It is interesting to find in the results evidence that the legal process used to arrive at the custodial decision did not have a significant impact on the nature of the decison made. The data lends some support to the findings of Marschall and Gatz (op. cit.) that the criteria used by parents in making custody decisions were almost the same as those employed by the judiciary. These results also suggest that the decisions whether arrived at by parents, or by the Court, may be equally valid and appropriate.

There was, however, some dissimilarity ($p >.0$[illegible]) found between the Trial and Pre-trial Conference categories for those children who wanted to change their custodial arrangements. Of these children, 72.9% did not have their wish complied with if the case went to Trial. In the Pre-trial category 42.9% of children did not have their wish met. This implies that if a child wishes to change his/her custodial arrangements then he/she is more likely to achieve this if the decision is made at a Pre-trial Conference rather than as the result of a Trial.

The age groups 6 - 11 and 12 - 15 account for 94.2% of the study sample. When these two groups are compared, our expectation that age would affect the relationship between decision made and the wish expressed is confirmed. In the 12 - 15 age category, 96.5% of children had their wish met. This is 13.4% higher than for the 6 - 11 age group. This suggests that the expressed wishes of children in the 12 - 15 age group may be seen as being more important than the wishes of children in the 6 - 11 age group. When custody is being determined a contributing factor here may be Section 64(1)(b) of Family Law Act, 1975, which provides that the wishes of children 14 and over, will be complied with unless 'special circumstances' exist.

The results obtained for children under 6 years and for those 16 and over, do not support our expectation. Of the 4 children under 6 years all of them had their wish met. It seems unlikely that the wishes of these young children were a determinating factor in the decision, however, one cannot fully discard this possibility. A more plausible explanation is that variables such as the nature of the competing claims and the wishes of older siblings may have contributed to this result. A larger sample is needed before a more definite statement can be made about this age category. A similar problem arises for the small number of children in the 16 - 18 age group. This group accounted for only 4.5% of the sample and consequently it is difficult to draw any meaningful conclusion from the results obtained. Thus, the findings, in part, confirm our expectation that the older the child the greater the possibility that the custodial decision would follow the child's expressed wish.

It may also be relevant that a greater number of children (25%) in the 6 - 11 age group desired a change in custodial arrangements as compared to only 9% of children in the 12 - 15 age group. Of these children who desired a change, - 40% of the former age group and 10 % of the latter age group did not have their preference met. It is also interesting to note that the decision-age relationship is not significantly affected by the legal process used.

The children in the sample were evenly distributed between mothers and fathers. Most of the children's wishes, and the decisions made, confirmed the "status quo". Consequently, it is not surprising that sex of the parent the child lived with did not significantly influence the decision-wish relationship. Overall, the percentage of children living with their mother as a result of the custody decisions was 51% and the remaining 49% went to live with their father. This suggests that sex of the parent is not an important consideration in custody decisions as Table 8 demonstrates.

As was predicted, no significant effect was obtained when the relationship between the wish expressed and the decision made was viewed in terms of the children's sex. This supports the findings of (Horwill, 1979) and (Eekelaar et al., op. cit.) that the sex of the child does not significantly affect the outcome of custodial disputes.

5. CONCLUSION

This paper has looked at the child's custodial preference and resultant decision where custody was in dispute. A strong, positive correlation was found to exist between the custodial decision and the expressed wish of the child. It is not known whether a direct casual relationship exists between these variables. Further research is needed to clarify what this apparent relationship is due to.

Nonetheless, interesting implications for theory and reseach arise as a result of these findings. The strong correlation between the custodial decision and the expressed wish of a child, which was found to remain relatively constant across age groups, questions some of the long held assumptions about children's wishes. The results obtained by this study imply that, in the main, children, parents and the judiciary choose the same custodial arrangements. It is possible that in custodial disputes the decision arrived at by children may be as equally valid and appropriate as those made by adults.

These results lend some support to Jenkins' (op. cit.) assertion that most children know whether or not an adult is able to care for them. He also makes the point that, in the majority of cases, children do not desire to be with adults who are easily manipulated, but rather with those who are most able to meet their emotional and physical needs. Research is needed to test the validity of Jenkins' claims.

However, it is possible that children's wishes play a more influential role in custodial decisions than some adults accept (Lowery, op. cit.; Siegal & Hurley, op. cit.). This influence may result from the adults' conscious consideration of the childrens' needs or from more subtle emotive factors of which the adults may not be consciously aware.

If one does not accept that a cause effect relationship exists between the expressed wish of a child and the resultant decision, then one could argue that to obtain a child's wish is unnecessary. The strong, positive correlation between decision and wish, found in our study, would suggest that children's custodial preferences would be met even if their wishes were not known by the parents and the judiciary.

It is equally possible that if parents are sensitive to the children's expressed needs then lengthy disputes over custody could be avoided. This would require an acceptance on behalf of parents that children do have the capacity to make decisions in their best interest as suggested by Jenkins above.

It has been reported elsewhere that there are costs and benefits to involving children in the resolution of custodial disputes (Chasin, R. and Grunebaum, 1981). Further research is necessary to identify what these costs and benefits are and what effect these have on children. Research is also needed to seek children's views about their involvement in the resolution of custodial disputes.

FIGURE 1

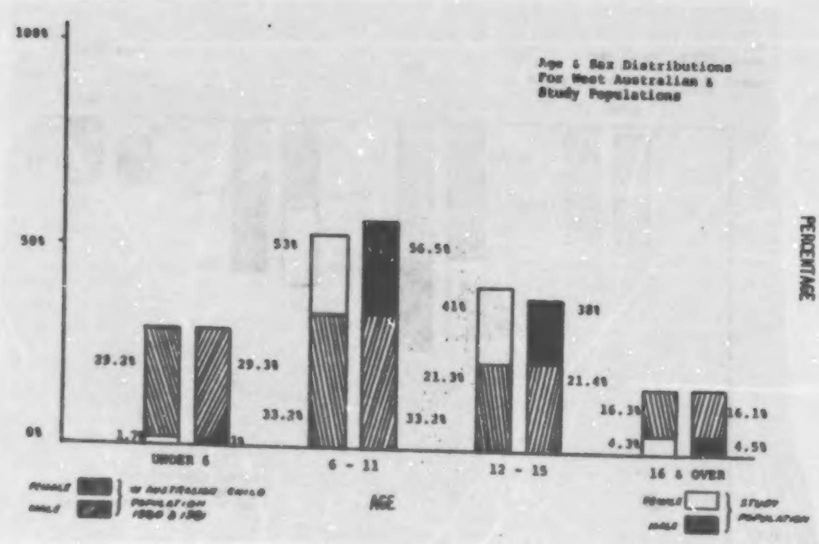
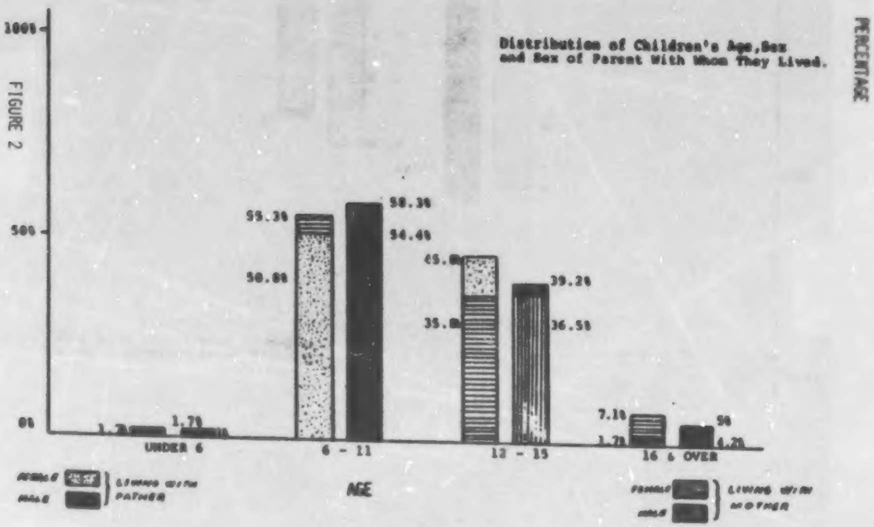

Age & Sex Distributions
For West Australian &
Study Populations
100%
50%
0%
PERCENTAGE
29.2%
1.7%
29.3%
1%
53%
33.2%
56.5%
33.2%
41%
21.3%
38%
21.4%
16.3%
4.3%
16.1%
4.5%
UNDER 6
6 - 11
12 - 15
16 & OVER
AGE
FEMALE
MALE
W AUSTRALIAN CHILD POPULATION
FEMALE
MALE
STUDY POPULATION

FIGURE 2



Distribution of Children's Age, Sex and Sex of Parent With Whom They Lived.

TABLE 1

DECISION RESULTS FOR STUDY SAMPLE

Decision Result	Number of Study Sample	% Study Sample
In Accordance	258	89.0
Not In Accordance	32	11.0
TOTAL	290	100.0

TABLE 2

RELATIONSHIP BETWEEN DECISION AND CHILD'S EXPRESSED WISH

Decision Result (Column %)	Child's Expressed Custodial Wish		Total Study Sample
	No change	Change	
In Accordance	224 (93.7%)	34 (66.7%)	258
Not In Accordance	15 (6.3%)	17 (33.3%)	32
TOTAL	239 (82.4%)	51 (17.6%)	290 (100.0%)

$x^2 = 28.6$ df 1 $p < .0000$

TABLE 3

RELATIONSHIP BETWEEN DECISION AND LEGAL PROCESS USED

Decision Result (Column %)	Legal Processes				Total Study Sample
	Trial	P.T.C.	Hearing	Other	
In Accordance	47 (81.1%)	94 (93.1%)	23 (95.8%)	94 (87.9%)	258
Not In Accordance	11 (19.0%)	7 (6.9%)	1 (4.2%)	13 (12.1%)	32
TOTAL	58 (20.0%)	101 (34.8%)	24 (8.3%)	107 (36.9%)	290 (100.0%)

$x^2 = 6.7$ df 3 $p < .08$

TABLE 4

RELATIONSHIP BETWEEN CHILD'S EXPRESSED WISH BY DECISION BY LEGAL PROCESSES USED

TRIAL

Child's Expressed Wish (Column %)	Decision Result		
	In Accordance	Not In Accordance	Total
No Change	38 (80.9%)	3 (27.3%)	41
Change	9 (19.1%)	8 (72.7%)	17
TOTAL	47 (81.0%)	11 (19.0%)	58

$x^2 = 9.89$ df 1 $p < .001$

TABLE 5

RELATIONSHIP BETWEEN CHILD'S EXPRESSED WISH BY DECISION BY LEGAL PROCESS USED

PRE-TRIAL CONFERENCE

Child's Expressed Wish (Column %)	Decision Result In Accordance	Not In Accordance	Total
No Change	85 (90.4%)	4 (57.1%)	89
Change	9 (9.6%)	3 (42.9%)	12
TOTAL	94 (93.1%)	7 (6.9%)	101

$x^2 = 4.08$ df 1 $p < .04$

TABLE 6

RELATIONSHIP BETWEEN DECISION AND AGE

Decision Result (Column %)	Age Categories 0 - 6	6 - 11	12 - 15	16 - 18	Total Study Sample
In Accordance	4 (100.0%)	133 (83.1%)	109 (96.5%)	12 (92.3%)	258
Not In Accordance	0 (0.0%)	27 (16.9%)	4 (3.5%)	1 (7.7%)	32
TOTAL	4 (1.4%)	160 (55.2%)	113 (39.0%)	13 (4.5%)	290 (100.0%)

$x^2 = 12.6$ df 3 $p <.005$

TABLE 7

RELATIONSHIP BETWEEN DECISION AND AGE

Decision Result (Column %)	Age Categories 6 - 11	12 - 15	Total
In Accordance	133 (83.1%)	109 (96.5%)	242
Not In Accordance	27 (16.9%)	4 (3.5%)	31
TOTAL	160 (58.6%)	113 (41.4%)	273 (100.0%)

$x^2 = 13.06$ df 1 $p < .001$

TABLE 8

RELATIONSHIP BETWEEN DECISION AND PARENT CHILD LIVED WITH

Decision Result (Column %)	Parent Child Lived With		Total Study Sample
	Mother	Father	
In Accordance	134 (88.2%)	124 (89.9%)	258
Not In Accordance	18 (11.8%)	14 (10.1%)	32
TOTAL	152 (52.4%)	138 (47.6%)	290 (100.0%)

$x^2 = 0.21$ df 1 $p < .78$

TABLE 9

RELATIONSHIP BETWEEN CHILD'S EXPRESSED WITH BY DECISION BY PARENT CHILD LIVED WITH

MOTHER

Child's Expressed Wish (Column %)	Decision Result		
	In Accordance	Not in Accordance	Total
No Change	112 (83.6%)	7 (38.9%)	119
Change	22 (16.4%)	11 (61.1%)	33
TOTAL	134 (88.2%)	18 (11.8%)	152 (100.0%)

$x^2 = 16.1$ df 1 $p < .0001$

TABLE 10

RELATIONSHIP BETWEEN CHILD'S EXPRESSED WISH BY DECISION BY PARENT CHILD LIVED WITH

FATHER

Child's Expressed Wish (Column %)	Decision Result		
	In Accordance	Not In Accordance	Total
No Change	112 (90.3%)	8 (57.1%)	120
Change	12 (9.7%)	6 (42.9%)	18
TOTAL	124 (89.9%)	14 (10.1%)	138 (100.0%)

$x^2 = 9.4$ df 1 $p < .002$

TABLE 11

RELATIONSHIP BETWEEN DECISION AND SEX OF CHILD

Decision Result (Column %)	Sex of Child		Total Study Sample
	Male	Female	
In Accordance	152 (86.9%)	106 (92.2%)	258
Not In Accordance	23 (13.1%)	9 (7.8%)	32
TOTAL	175 (60.3%)	115 (39.7%)	290 (100.0%)

$x^2 = 1.4$ df 1 $p < .2$

TABLE 12

RELATIONSHIP BETWEEN DECISION AND PLACE OF INTERVIEW

Decision Result (Column %)	Place of Interview			Total Study Sample
	Home	Office	Home/Office	
In Accordance	154 (89.0%)	99 (92.5%)	5 (50.0%)	258
Not In Accordance	19 (11.0%)	8 (7.5%)	5 (50.0%)	32
TOTAL	173 (59.7%)	107 (36.9%)	10 (3.4%)	290 (100.0%)

$x^2 = 16.8$ df 2 $p <.0002$

TABLE 13

RELATIONSHIP BETWEEN CHILD'S EXPRESSED WISH BY DECISION BY PLACE OF INTERVIEW

HOME

Child's Expressed Wish (Column %)	Decision Result		
	In Accordance	Not In Accordance	Total
No Change	138 (89.6%)	8 (42.1%)	146
Not In Accordance	16 (10.4%)	11 (57.9%)	27
TOTAL	154 (89%)	19 (11%)	173 (100%)

$x^2 = 25.48$ df 1 $p < .0000$

TABLE 14

RELATIONSHIP BETWEEN CHILD'S EXPRESSED WISH BY DECISION BY PLACE OF INTERVIEW

OFFICE

Child's Expressed Wish (Column %)	Decision Result		
	In Accordance	Not In Accordance	Total
No Change	81 (81.8%)	5 (62.5%)	86
Change	18 (18.2%)	3 (37.5%)	21
TOTAL	99 (92.5%)	8 (7.5%)	107 (100.0%)

$x^2 = .74$ df 1 $p < .38$

APPENDIX 1

GLOSSARY OF TERMS

Family Court Counselling Service - the Counselling Service attached to Family Courts in Australia.

Court Counsellor - a counsellor working with the Family Court Counselling Service.

Family Law - law as prescribed in the Family Law Act 1975 and the Family Court Act 1976-1979.

Family Court of W.A. - State Court established by the Family Court Act 1976-1979.

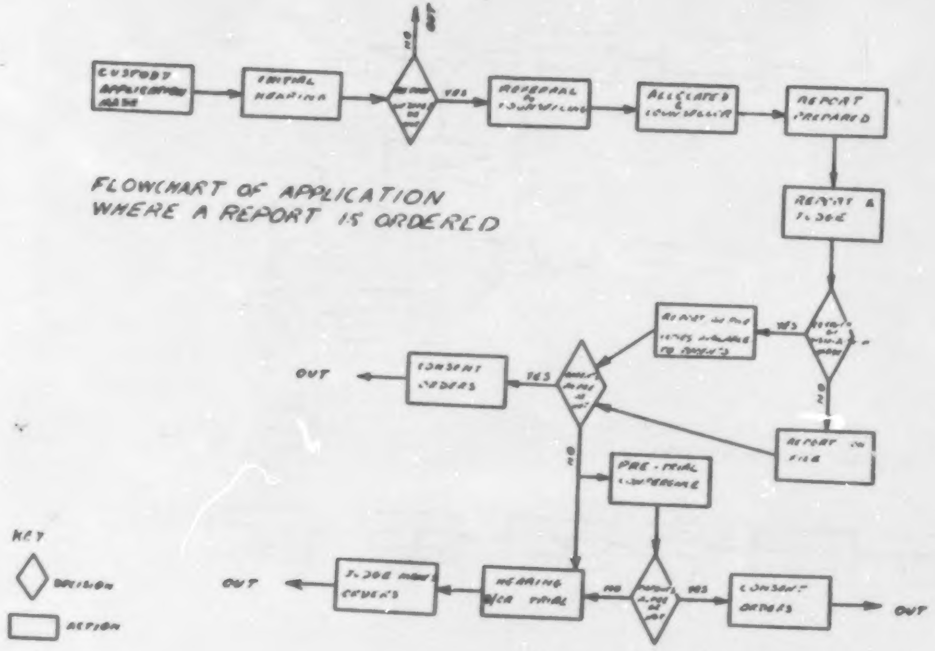
Trial - process whereby evidence supporting competing claims is heard and a decision is made by the Court.

Hearing - an appearance before a Judge or Magistrate where a person may present arguments or evidence on some matter under legal investigation.

Pre-trial Conference (P.T.C) - a conference held in the presence of a Registrar, or Deputy Registrar, and attended by the people directly involved in the dispute. Solicitors may accompany their clients or they may attend on their own, if permission has been given to them by their clients. The conference provides the disputants with an opportunity to discuss their differences and arrive at an agreement. (The same as Regulation 96 Conference).

Custodial Decisions	- Consent - custody orders issued consequent to an agreement being reached between the parties. - Non-Consent - custody orders made by a Judge or Magistrate at a trial or hearing.
Reports	- a report prepared for the Family Court as a result of an order by the Court.
Custody Order	- A Court order determining with whom a child lives.
Contested Custody	- where an application is made to the Court to resolve a dispute over custody between two or more people.
Contested Custody Decision	- usually refers to a custody decision resulting from a trial and/or hearing.
Custodial Wish	- the wish and/or preference expressed by a child as to his/her custodian.
Case Law	- the general term used for principles and guidelines laid down by past judicial decisions.
Registrar	- the Family Law Act, 1975 defines him/her as "the principal officer of the Court or any other appropriate officer of the Court".

APPENDIX 2


CUSTODY APPLICATION MADE
INITIAL HEARING
YES
NO
OUT
REFERRAL TO COUNSELLING
ALLOCATED TO COUNSELLOR
REPORT PREPARED
REPORT TO JUDGE
YES
NO
REPORT ON FILE
CONSENT ORDERS
OUT
YES
NO
PRE-TRIAL CONFERENCE
HEARING
JUDGE MAKES ORDERS
OUT
NO
YES
CONSENT ORDERS
OUT
KEY
DECISION
ACTION

FLOWCHART OF APPLICATION
WHERE A REPORT IS ORDERED

APPENDIX 3

Variables Assessed	Description
Age:	Categories: 0-5 years 6-11 years 12-15 years 16-18 years
Sex:	Female Male
Parent Child Lived With:	Mother Father
Place of Interview:	Home Office Home/Office
Child's Custodial Wish:	No Change - child wishing no change in custodial arrangement. Change - child wishing change in custodial arrangement
Legal Processes:	Trial Pre-trial Conference (P.T.C.) Hearing Other (orders by consent other than at P.T.C.).
Consent:	Yes No
Decision:	In accordance with child's wish. Not in accordance with child's wish.

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Patterns of school adjustment in children from families experiencing marital problems

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This paper (1) briefly reviews the literature on the effects of marital problems and separation and, or divorce on children; (2) describes a longitudinal prospective study designed to examine the effects of marital problems on the four to eleven year age group in which home behaviour, self-concept, parent psychological well-being, academic progress and school behaviour are measured; and (3) reports the initial results of that aspect of the study which compares the classroom behaviour of children from families in which there is marital disruption to children matched on sex, teacher and classroom but who are otherwise randomly selected (i.e. may or may not have parents experiencing marital difficulties).

It is widely accepted that marital problems maintain and possibly even determine child maladjustment (Porter & O'Leary 1980; Emery & O'Leary 1982; Emery 1982) and that the effect on boys is greater than that on girls (Rutter 1971; Hess & Camara 1979). There is also consensus that marital separation, and divorce, result in behavioural problems in children. One study is which 560 parents were interviewed about their perception of childrens adjustment to separation found that in nearly 70% of the families one or both parents reported the onset of symptoms (such as moodiness, unusual displays of temper, problems in school) at the time of separation (Fulton 1979.)

Similarly an Australian study of parents perceptions of their childrens reactions to separation found that over one third of the sample reported that their children had been negatively affected (Burns, 1980 a,b).

Specific symptoms which have been discussed in the literature include:

(a) psychosomatic symptoms (Luepnitz, 1979; Wallerstein and Kelly, 1976; Kalter, 1977; Snyder, Minnick and Anderson, 1980);

(b) depression (McDermott, 1970; Kalter, 1977; Burrett, 1980);

(c) delinquency (Kalter, 1977; Herzog and Sudia, 1973);

(d) lowering of self-esteem (Raschke and Raschke, 1979; Stephens and Day, 1979; Berg and Kelly, 1979; Lowenstein and Koopman, 1978);

(e) changes in Sex Role Identity (Biller, 1969, 1971; Hetherington, Cox and Cox, 1979; Sorosky, 1977);

(f) negative effects on cognitive functioning (Santrock, 1972; Hammond, 1979);

(g) withdrawn and/or passive behaviour (Kelly and Berg, 1978; Wallerstein and Kelly, 1974);

(h) fear of abandonment (Derdeyen, 1977);

(i) aggressive and/or angry behaviour (Rubin and Price, 1979; Wallerstein and Kelly, 1979; Tooley, 1976);

(j) denial (Derdeyen, 1977);

(k) self-blaming and/or guilt (Kelly and Berg, 1978; Wallerstein and Kelly, 1974; Sorosky, 1977; Derdeyen, 1978);

(l) anxiety (Rockcastle and Doyle, 1979; Tuckman and Regan, 1966);

(m) developmental regression (McDermott, 1970; Wallerstein, 1978; Connell, 1981; Hetherington, Cox and Cox, 1979);

(n) loyalty conflicts (Schlesinger, 1976); and

(o) poor school adjustment (Hetherington, Cox and Cox, 1979; Hammond, 1979; Touliatos and Lindholm, 1980).

Quite a good review which examines evidence for and against the existence of many of these symptoms can be found elsewhere (see Goetting, 1981).

For the greater part the focus in the literature has been on the effects of divorce and/or of the one-parent family on child adjustment whereas the focus here will be on the influence of marital disruption (marital problems with, or without, consequent separation) on just the school adjustment of the child.

There has been little systematic research examining the relationship between childhood adjustment and marital disruption. What has been done is plagued with conceptual, design and methodological problems so it cannot be asserted with any satisfactory degree of confidence what the effects marital disruption are on children. Many of the studies have relied on small varied samples (e.g. Luepnitz, 1979), some have lacked the use of a comparison group and have relied on unstructured clinical interviews (e.g. Wallerstein and Kelly, 1974) and most have relied on data from clinical samples (Boike et al., 1978). A number of studies are somewhat suspect because they have relied on the teacher providing both details as to the marital status of the parents as well as ratings of the child's behaviour, (e.g. Kelly, 1979; Boike et al., 1978; Touliatos and Lindholm, 1980; Felner et al., 1981). As it was found that teachers may rate a child thought to be from a divorced family more negatively on scales of "happiness", "emotional adjustment" and "copes with stress" than a child thought to be from an intact family there is support for concern about these studies. Furthermore, from an examination of studies in this vein Blechman has concluded that

> "Teachers appear to base their judgements of children's performance, not on their observations of the individual child, but on their knowledge of the child's family background" (1982: p 186).

A possible example of this can be seen in the Edgar and Headlam (1982) pilot study in which teachers indicated that children from one parent families differ from children from two parent families in terms of emotional instability. Is this because teachers are only aware of a small number of children being from separated or divorced families and that they have specific knowledge of these cases because the children's symptoms have necessitated looking for reasons? Whatever the reason, the importance of an independent nomination of parental marital status is obvious if one is to rule out expectation effects.

Two studies in which it is possible, though not entirely clear, that the variables of marital status and child adjustment have not been confounded indicate some contradictory results although the time frames (i.e. time since separation) are probably not comparable. The first study used a multimethod, multi-measure longitudinal approach over a two year period to study divorcing parents and their pre-school children (Hetherington, Cox and Cox, 1979). Disrupted social functioning was found in children immediately following divorce which manifested in both boys and girls in terms of

> "greater fantasy aggression and opposition, and seeking help, attention and proximity ... less positive nonverbal behaviour (such as smiling and hugging) and more negative nonverbal behaviour (such as pouting, clinging and scowling) more crying, whining and complaining, and more inattention, activity changes and inactivity" (Hetherington et al., 1979: pp. 39-40).

The second study found no overall significant differences on several measures (self-concept, immaturity, withdrawal, peer relations, reading and mathematics) between children from divorced and intact families (Hammond, 1979). Boys from divorced families were rated as significantly higher in terms of "acting out" and "distractibility" than boys from intact families. No such differences were found for girls in this study which included 165 lower-middle to middle-class suburban children who were matched on grade level, sex and teacher. In some ways these results are comparable to the Hetherington et al. results as measured at 2 years following divorce in that they found that disrupted school social functioning was still lingering in boys but was not as noticeable in girls. No information as to the length of time the parents had been separated or divorced was provided, though.

It is very easy to criticize the research endeavours in this field in which so many complex and perhaps even unknown variables may operate. The tremendous methodological difficulties are obvious. Perhaps the foremost problem is that of gaining the co-operation of those who meet the requirements of an appropriate sampling frame. Reinhard (1977) has mentioned that one of the reasons for the lack of data in this area has been the resistance on the part of suitable subjects as well as from social agencies and the legal community to assist. Where, for example, does the researcher find a sizeable number of families experiencing marital disruption? It is difficult enough to locate families who have been separated for a brief period and even then it is not possible to guarantee a random sample because there is certainly not access to the full population of those who separate. The only way of maximizing the chances of this would be to enlist the co-operation of the State Welfare Services, the Social Security Department and both the Magistrate's and the Family Court. Even if this were possible, those who separate without applying for either a pension or Court orders would be omitted. Sampling the families in which there is marital disruption, but no separation, is therefore enormously more difficult and perhaps impossible as marital problems are considered to be a sensitive and private subject, often not even acknowledged or discussed between those experiencing the disruption. This is evident by the dearth of studies examining the relationship of marital problems and child adjustment in non-clinical samples.

A second problem is the lack of valid and reliable measures, especially when the speed at which children develop makes assessment difficult. Thirdly, meaningful assessment probably only comes from comparison of the same children pre- and post-separation or, as an alternative of lesser value, using children from troubled families as the comparison group.

A combination of these approaches was utilized in the Family Study which was designed to address the following questions:-

1. What is the level of adjustment of parents and children pre-separation, approximately 2 months post-separation, 12 months post-separation and 24 montns post-separation in comparison to parents and children from marital problem families at matched intervals between assessments?

2. Do children from marital problems and separated families differ from each other, and from their "matched classmates", in their school adjustment and academic achievement?

3. What is the relationship between adult and child adjustment?

4. Is there an association between child self-concept, child adjustment and inter-parental conflict?

Method

Subjects: Sixty-three marital problems families were recruited mostly through Family Court Records and Marriage Guidance Agencies. The families fell into three equal sized groups: Marital Problems Group (M.P.G.) - families were "intact" even if living separately "under the same roof"; Marital Problems Separation Group (M.P.S.G.) - parents were separated between the first two assessments; and Marital Separation Group (M.S.G.) - parents were separated prior to joining the study but had been separated less than three months. Separation was defined as the event of one parent leaving the home - the legal definition which provides for parents to be separated "under the same roof" was not used. (Subsequent separations and reconciliations clouded the group structure but allowed for examination of reversal trends i.e. what happens to children when their parents reconcile).

Families were included only if:

(a) both parents were English speaking and both were willing to participate;

(b) the family included one (or more) kindergarten or primary school age child; and

(c) the parents were experiencing marital difficulties or had been separated less than three months. (Where there was evidence of gross psychiatric disturbance or mental retardation in either parent or child, or a blended-family situation existed families were excluded). All children who fell within the age frame were included so that up to four children were included from any one family. The total number of children in the sample was 112.

MEASURES

In addition to structured interviews and rating scales the parents completed the General Health Questionnaire (Goldberg, 1972), and the Adelaide Parent Questionnaire (Glow, 1978). (The Adelaide Parent Questionnaire was derived from the Conners (1970) Parent Rating Scale). Children over 7 years of age were interviewed and required to complete the Piers Harris Self-Concept Scale (Piers, 1969). Teachers completed the Rutter B Scale, ratings of academic achievement and the Conners Teacher Questionnaire (Conners, 1969, 1970, 1973).

Only the Conners Teacher Questionnaire (C.T.Q.) data will be reported. This measure consists of 39 items: 21 items in the area of classroom behaviour, 8 items on group participation, 9 items on attitude to authority and 1 item on attendance, together with a global behaviour rating. Each child is rated in terms of how much a particular characteristic or behaviour occurs from 0 "not at all" to 3 "very much" on a four point scale.

The C.T.Q. has been shown to discriminate between normal and hyperactive children (e.g. Conners, 1970; Kupietz, Bialer and Winsberg, 1972) and it appears sensitive to drug treatment effects (Conners, Taylor, Meo, Kurtz and Fournier, 1972; Werry and Sprague, 1974). Normative studies using this questionnaire in general population samples have been carried out in South Australia (Glow, 1978, 1980a, 1980b), in the United States (Goyette, Conners and Ulrich, 1978; Werry, Sprague and Cohen, 1975), and in New Zealand (Werry and Hawthorne, 1976). The factor structure has been found to be fairly stable across studies. Test-retest factor reliabilities of the Teacher Questionnaire range from 0.70 to 0.90 (Conners, 1973). Werry and Hawthorne (1976) point out, though, that norms obtained on one population may not necessarily be valid for another population even in the same country. Just the same it seemed advantageous to select a measure on which there was some Australian normative data for the purpose of this study.

The C.T.Q. was modified for use in this study such that the teacher was requested to rate the first four same sex children on the class list as the target child. This was adapted from the Glow (1980) study not only to allow for comparison purposes at each point in time but also in the belief that this should increase validity and reliability especially when a child changes school or teacher.

Scales of Conduct Problem, Hyperactive - Inattentive, Unforthcoming - Unassertive, Socially Rejected, Antisocial, Depressed Mood and Anxious to Please were based on the factors obtained by Glow (1980a) in her validation study of this measure which utilized a sample of 2,475 children.

Procedure

When suitable parents were identified they were either sent a request letter outlining the study, or if identified through a Marriage Counselling Agency they were informed briefly of the study and asked to complete a consent form which provided the Agency authority to provide their name and point of contact to the researcher. In both cases the parents were then contacted by telephone. (In the event of this not being possible another letter was sent requesting they contact the researcher). Confidentiality was guaranteed such that the information provided by any member of the family would not be passed on to any other member and that the information could not be used in any family litigation. Families were also informed about how the C.T.Q. data would be obtained in such a way to guarantee the confidentiality of their situation. When parents were subsequently interviewed they were invited to examine the C.T.Q. and to sign a covering consent form for the school. This explained that the family was participating in a longitudinal University study, provided permission for the teacher to "provide an honest objective assessment" of the child and pointed out that the results would be kept confidential and only be used for research purposes. The co-operation of the school principal was gained by telephone by the researcher before the forms and a reply-paid envelope was sent to the school. Schools were re-contacted when the forms were not returned within one month.

The same procedure was followed at three points after the initial assessment on the M.P.G. and the M.P.S.G., these being about four months later, 10-12 months later, then 12 months later again. (This means that families who separate are seen at less than 3 months pre- and post-separation, 12 months post-separation and 24 months post-separation.)

RESULTS

No significant differences were found between the groups in terms of the number of children in the family, length of marriage, parental education, husband's income, or the hours worked by each parent.

Only the preliminary results from the Time 1 and Time 2 Conners Teacher Questionnaire assessments completed by May 1983 will be reported.

The patterns of response distribution of the target sample were remarkably similar to the normative date of Glow (1978) except insofar as Items 1, 10, 11, 12, 16, 22. 33, 34 and 36 (fidgeting, serious or sad, day dreams, sulky or sullen, mood changes quickly, isolates herself/himself from other children, shy, fearful, stubborn) are concerned at Time 1, and additional Items of 8, 9, 13, 37 and 40 (fails to finish things he/she starts, sensitive to criticism, cries, anxious to please, global score) at Time 2. In each case, where there was a difference of 10 per cent between the Glow data and the target sample data, the target sample had more of a problem on each item than the Glow sample. The only exception to this was on Item 8 (fails to finish things he/she starts - short attention span) where the target sample scored more positively than Glow's normative sample.

In order to compare the target children in this study to their four matched classmates the mean scale score of the latter was utilized in a repeated measure MANOVA (multivariate analysis of variance) procedure. (The consequent reduction of variance in the comparison sample is acknowledged). At both assessment points no significant differences were found using the MANOVA when the seven scale scores were included. (Hotellings T^2 at Time 1: F = 1.404; d.f. = 7,44; Sig. of F = 0.228/Hotelling T^2 at Time 2: F = 1.897; d.f. = 7,60; Sig. of F = 0.086).

A similar MANOVA procedure, except for independent samples, was used to examine whether or not the target groups varied from each other. Prior to this an ANCOVA (univariate analysis of covariance) procedure was performed to determine if the group or covariate (teacher's ratings of the other class children) effect was most operative. When the seven scale scores, the global score and the summated item scores were analyzed there was no significant group effect (i.e. there was no evidence that even if teachers knew of the family situation, a stereotype or expectancy effect was present). At Time 1 M.P.G. and the M.P.S.G. were compared. No significant differences were found. At Time 2 the M.P.G. was compared to the combined M.P.S.G. and the M.S.G.-again no significant differences were found.

Sex differences are illustrated by Table 1.

TABLE 1 IN HERE

In order to take into account a sex effect operating in the comparison sample, a MANOVA on the difference between the target and the comparison scores was carried out. A sex effect was very obvious (Hotellings T^2: F = 4.72; d.f. = 7,55; Sig. of F = 0.000) ; the univariate ANOVA's indicating that boys exhibit greater Conduct problems, Hyperactive-Inattentiveness and Anti-Social Behaviour.

TABLE 2 IN HERE

There were no other significant findings in term of the Group by Sex and Target, Sex and Target, Group and Target analyses.

Out of the seventy Univariate F scores provided by the MANOVA'S only five achieved a significant level of $\alpha = 0.01$ or higher. Three of these results were reported in relation to the sex effect. The other significant univariate findings were in relation to the target children being more depressed ($\alpha = .003$) and more anxious to please ($\alpha = 0.010$) than the comparison children at Time 2. Since a huge number of comparisions have been made, though, especially in relation to both sample size and the number of dependent variables, caution must be expressed in interpreting the univariate F's as significant because they may well have been found by chance.

DISCUSSION

The first main analysis indicated that there were no statistically significant differences between either the children from the target families (whether they be "intact" or "separated") and their same sex classmates or between target children from each of the three groups as rated on the Conners Teacher Questionnaire. The univariate analyses suggest, though, that the target children may be somewhat more depressed and anxious to please.

This overall result is in contrast to the Kelly and Wallerstein (1979) finding that about two-thirds of children demonstrated changes in behaviour following separation in terms of the appearance of high anxiety levels and children constantly interrupting class activities, but is similar in that teachers noted sadness and depression in the children.

The second main analysis indicated a significant sex effect such that at Time 2 boys were rated more negatively than girls on the Conduct Problem, Hyperactive-Inattentive, Unforthcoming-Unassertive, Socially Rejected and Anti-Social Scales. Although boys were rated more negatively than girls and the sample had a large number of children from separated families in it, no Group by Sex Effect was found. Therefore, there was no indication that boys suffered more than girls in the face of parental marital problems even though the data supported previous non-clinical findings that boys show under-control of behaviour (Hess and Camara, 1979; Whitehead, 1979; Block, Block and Morrison, 1981).

Given that there is general agreement that marital disruption and behavioural problems in children are associated how then can the finding of no significant differences in the main analyses be explained? Now although there were no quantitative measures of degree of marital difficulty included, it could be reasonably argued that the method of selection led to the inclusion of mostly quite severe marital problems families in the two groups who joined the study in a "pre-separated" state. Therefore it might well have been expected that children from these families would differ to an appreciable degree in their behavioural adjustment. If there was no reason to suspect that teachers knew exactly why the target children were included in the study, or, that if they did in some cases, that this created a systematic effect in the manner in which they rated the target children, what considerations need to be made? One possible reason for the general lack of differences between the target children and the comparison children could be due to the composition of the comparison group. By chance, it may have comprised a large number of children from marital problems families but there was no reason to suspect that by asking the teacher to rate the first four children on the class roll as the comparisons that this group would be unrepresentative of the class as a whole. Perhaps then it might be argued that the teachers rated the target children in a "protective" manner even though they were told that their ratings would not be discussed with the parents. If this were the case it would have been more acceptable to rate the child as being depressed or anxious to please rather than as a "Conduct Problem" or as "Hyperactive-Inattentive". This is perhaps a viable explanation except that it does not hold for the teachers rating in terms of sex differences.

One other possibility is that the C.T.Q. was not sensitive enough to pick up subtle differences in children's behaviour, although, as it has been found to be sensitive to drug effects, this cannot be accepted with any degree of confidence. The final possibility is that the effects are not necessarily evident in the school setting but more perhaps in social-peer relationships or in the home environment. Data on parent's rating of children's behaviour will be reported in the future.

Therefore it would appear that design, choice of sample and methodology will determine whether indications of altered school adjustment will be found. For example, if the researcher utilizes: (1) a design comparing children from "happy marriages" to children from "divorced marriages", or (2) utilizes a clinical sample or (3) confounds the variables of teacher expectation and child adjustment by alerting the teacher to the marital status of the parents, then it is likely that "effects" will be found. When these problems are averted, no major effects of marital disruption are found in terms of the school adjustment of children. Evidence supported the view that boys, in general, are more "poorly adjusted" than girls but there is no evidence to suggest that, beyond this fact, that boys cope more poorly than girls in the face of parental marital disruption.

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TABLE 1: GIRLS VERSUS BOYS SCORES AT TIME 1 AND TIME 2 UTILIZING THE TOTAL TARGET SAMPLE

	TIME 1				TIME 2			
	Girls	Boys	*F*	*p*	Girls	Boys	*F*	*p*
Total Number of Problems	16.10	22.73	3.92	0.053	17.64	26.32	6.908	0.011
Global Rating	1.13	0.71	0.611	0.438	0.42	0.62	1.069	0.305
1. Conduct Problem Scale	0.21	0.46	3.714	0.598	0.17	0.51	10.067	0.002
2. Hyperactive-Inattentive Scale	0.28	0.75	14.106	0.001	0.38	0.95	13.421	0.005
3. Unforthcoming-Unassertive Scale	0.71	0.72	0.003	0.955	0.75	0.79	0.034	0.853
4. Socially Rejected Scale	0.36	0.28	0.329	0.569	0.36	0.38	0.022	0.882
5. Anti-Social Scale	0.02	0.17	2.662	0.109	0.03	0.22	6.162	0.016
6. Depressed Mood Scale	0.70	0.74	0.103	0.749	0.93	0.70	2.482	0.120
7. Anxious to Please Scale	1.62	1.28	1.558	0.218	1.70	1.53	0.712	0.402

TABLE 2: MANOVA EXAMINING SEX DIFFERENCES AT TIME 2
(F's BASED ON HOTELLINGS T^2)

	F	d.f	Sig. of F
Group by Sex	0.894	14,108	.567
Sex	4.718	7,55	.000
Group	0.831	14,108	.635
Group by Sex and Target	*	*	*
Sex and Target	1.019	7,55	.428
Group and Target	0.839	14,108	.625
Target	1.863	7,55	.094

* (eigenvalue problem failed to converge)

Some social, economic and relationship effects for families and young children following marital separation

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Marriage breakdown in this country has become a matter of increasing concern to policy makers and practitioners in a number of disciplines. In 1982 there were 44,088 divorces granted in Australia and 117,275 marriages (approximately 90,000 first marriages) in the corresponding period. This means almost one divorce for every 2-3 first marriages. In addition to its higher incidence, divorce is more likely to involve children as the age of divorcing couples becomes younger (Espenshade 1979). During 1982 there were 53,010 children involved in the 44,088 divorces of that period (A B S).

The above figures increasingly oblige us to accept Goldmeier's (1980) description of marriage breakdown as a normative event in our society. Other writers support this view. Raschke and Raschke (1979), for example, describe divorce as an adaptive strategy for families in a rapidly changing society rather than an indicator of family disintegration. Yeatman (1970) also refers to the family as an adaptive unit responsive to social change and human need. McDonald (1983) predicts a 40% divorce rate for presently marrying couples in Australia. It cannot be said that divorce rates of such magnitude reflect intra-family pathology. This statistic obviously indicates a basic change in the family unit as it responds to social pressures.

Considerable confusion exists in the Australian society about the effects of divorce on children. Despite evidence that in some families parental separation is a positive alternative for children to ongoing marital conflict (Rutter, 1971) and the finding that a significant percentage of children proceed through the family breakdown with little apparent ongoing effects (Fulton, 1979; Fine, 1980), the assumption remains in much professional thinking that divorce has extreme and long term negative sequalae for all children (Levitin, 1979). Longfellow (1979) reports that research findings to date are equivocal and do not permit assertions that divorce has any single broad reaching impact on children. Raschke and Raschke (1979) and Rosen (1980) also argue this point and discuss the difficulties inherent in trying to have these more positive findings accepted in our society.

It is a matter of central importance that although research findings on the effects of divorce on children are equivocal, the view persists that children are inevitably "damaged" by parental separation. Reiss (1981) observes that idealogies are an important issue to consider in research and refers to social scientists as themselves having emotional commitment to their ideological positions. The issue of ideologies is not yet clearly enunciated in research into family breakdown. Raschke and Raschke (1979) are critical of the way in which present findings concerning the effects of separation on children are interpreted. They argue that the interpretations are often in terms of negative consequences when the research findings, in an objective sense, do not support these interpretations.

To date research into family breakdown has been focussed too closely on the event and has not attended to issues such as the total family context, family processes and family methods of coping with stress.

Also as Bernardo (1981) has stated, research findings need to be subjected to cross cultural tests and a "macro-sociological" approach should be adopted in family research. This broadening of approach would free the study of divorce from its present confines.

It has long been acknowledged that marriage breakdown is a crisis event (Wiseman 1975; Leupnitz 1979; Smiley and Morrison 1980) which begins a period of transition for the family to some new equilibrium (Wallerstein 1980; Smiley and Goldsmith 1981). Given this context, a statement of the effects of divorce on children requires a knowledge of the major changes (and stress points) that accompany divorce (Longfellow 1979). The research findings of Hetherington, Cox and Cox (1978) provide a useful framework around which can be built a more detailed understanding of the effects of marital separation on children. These authors found three major areas of stress for a family after separation. These are:

(1) Practical problems of living (economic, housing etc.);

(2) Emotional distress;

(3) Social life and interpersonal relationships.

One of the limitations in research and the literature on family breakdown has been the focus on the psychological effects and emotional management of the experience. Matters such as the economic consequences and social network have received scant attention in the literature and even less in research (Everly 1977); Levitin 1979). Where the social/economic factors are acknowledged, they are usually interpreted in terms of their psychological effects through the stresses they add to the family unit (Westman 1970; Longfellow 1979; Hetherington, Cox and Cox 1978; Wallerstein and Kelly 1979). Although psychological stress is an important consideration in a family's ability to cope with the post-separation transition, there are additional effects. Changed financial circumstances and constricted social networks create different life experiences and opportunities for children (Bane 1976; Everly 1977; Espenshade 1979).

Everly (1977) has suggested that there is a need for more research into the social/economic consequences of divorce as opposed to the psychological. Bane (1976) and Espenshade (1977) have referred to economic disadvantage after divorce but their studies have been based on single parent family statistical information or questionnaire information without controls. Nevertheless their findings suggest considerable changed life circumstances for separated families and in a direction of disadvantage.

Inevitably a focus on the social and economic consequences of marriage breakdown leads to an examination of social class factors. Low socioeconomic status usually means that fewer financial resources are available to the family and thus a greater degree of stress is experienced than for families with more resources (Colletta 1979; Hetherington 1979). It is of interest that both the Wallerstein and

Kelly study (1980) and the Hetherington, Cox and Cox study (1979) used samples of white, middle class families in their research. This may account for their lack of focus on economic and other resource issues, although they do acknowledge these matters in their writing.

The large number of life changes and stresses on the family unit post separation have been defined as having a cumulative effect on family members (Hetherington 1979; Longfellow 1979; Wallerstein 1980). Hetherington (1979) reports from her research a wide variability in children's responses to family breakdown. The effects on the child relate to family circumstances (Bane 1976; Colletta 1979), the family processes (Rutter 1971; Boss 1980; Smiley and Goldsmith 1981), and the individual child (Rutter 1979; Longfellow 1979).

In describing the effects for children resulting from family breakdown, it is thus necessary to describe the experiences of the family unit and the changes to which it is subjected. The child's experience is mediated in part by the family circumstances. A study of the effects on the child must therefore give focus to the family unit as well as to the individual child.

Much of the knowledge concerning the effects of marital separation and divorce on children comes from the research efforts of Hetherington, Cox and Cox (1978), and Wallerstein and Kelly (1979). While these studies are important benchmarks in the field, they suffer from some design limitations and do not describe the Australian situation (Eisen, 1979). The design limitations of the Wallerstein & Kelly study (1976, 1979) are principally their reliance on a sample of subjects from a clinical population. These were families who had sought help from a counselling service and who participated in the research. Further there was no use of a comparison group of non-separated families and the study of predominantly middle class subjects. This latter criticism can also be made of the study by Hetherington, Cox & Cox (1978) who used a middle class sample in their research.

In the study to be reported here, some of the criticisms concerning earlier research have been addressed. As well as broadening the research to include an examination of social/economic factors, a non clinical sample of families has been used and efforts were made to include families over the range of socio-economic status. Also included was a design that allowed for comparisons with non-separated families together with matching of subjects on significant criteria.

The study attempts to examine the impact on children of parental separation. The two areas given focus were the adjustment of the child and changes in family circumstances subsequent to the separation.

METHOD

DESIGN

The research design involved use of three groups of families, two groups of separated families and one group of intact families. The purpose was firstly to provide comparison between separated families and intact families, and secondly comparison between the two separated groups to explore changes over time for separated families. It is proposed to study thirty children in each group. As will be indicated later, this paper reports interim findings on the basis of incomplete samples.

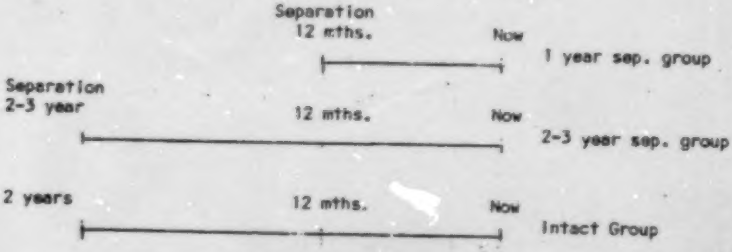
Group 1 was comprised of children whose parents were separated for from 10 to 14 months. Group 2 included children whose parents were separated for from 24 to 36 months. The time periods post separation of 1 year and 2-3 years were chosen because they were the time periods used by Hetherington, Cox and Cox (1978) in their study. The two time periods allow for comparison of the two groups to explore whether the effects of parental separation change over time. Hetherington, Cox and Cox (1978) and Smiley and Goldsmith (1981) suggest that the time allows resolution for families of the crisis of separation.

The three groups of children were matched for sex of child, approximate age of child, and socio-economic status of the family based on the employment classification of the major breadwinner prior to the separation, or to an equivalent time for the intact families.

The design provided for measures to be taken in relation to a number of time periods to allow for comparisons between the groups (see Table 1). Information was obtained for the present, and retrospectively for periods prior to separation for each of the separated groups and for two time periods for the intact group to correspond to the time pre-separation of the two separated groups. Also included was information from each of the separated groups for a period six months after separation. However, this information has not been included in the present paper.

Table 1 below details the time periods for which measures were taken concerning the family and child's circumstances.

TABLE 1: TIME PERIODS USED FOR OBTAINING MEASURES FOR EACH GROUP OF SUBJECTS



In each family the circumstances before the separation and in the present were obtained. For the non-separated group of families, the circumstances of the family were obtained for the present and for a time in the past equivalent to the period pre-separation of the other two groups. In this paper only the period two years past was used for comparison with both the 1 year separated and 2-3 years separated groups. This was because on most of the measures there were no differences in the family situation for the intact group between 1 year and 2-3 years. Further, this facilitated presentation for the purposes of this paper.

RESEARCH INSTRUMENTS USED

There were a number of research instruments used.

They were -

(a) An interview questionnaire given to the parent providing care in the separated families and either parent (usually the mother) in the non-separated group.

(b) An interview questionnaire to the child's school teacher.

(c) An interview questionnaire to the child together with a reading test (St. Lucia reading test) and the Coopersmith self esteem inventory.

The parent questionnaire obtained from the parent information on the family circumstances prior to the separation (or 2 years for non-separated families) and in the present. Parents were interviewed on a visit to their home. The questionnaire covered a number of areas of the family circumstances such as finances, housing, use of child care, family and friendship supports. The parent was also requested in the questionnaire to comment on the child's adjustment. In addition, the questionnaire asked the separated parents for information about the separation.

The questionnaire to teachers focussed on the child's functioning in the school environment. Teachers were interviewed at the school. It was hoped that teachers would provide an objective comment about the child's functioning in the school setting.

When children were interviewed, they were not asked questions about the separation. This restriction was placed upon the research in order to obtain permission to have access to schools and also to give reassurance to parents in obtaining their co-operation. The questionnaire focussed on the child's interests and attitude to family. The child was interviewed in the home environment. The St. Lucia reading test and the Coopersmith self esteem inventory were administered in the child's home.

SUBJECTS

The age range of children in the families studied was 6 to 8 years at time of parental separation. (At time of interview the children were aged 7 - 11 years). This age range represents a reasonably homogeneous grouping of children who have commenced school and who are in what could be termed the "early latency" period of emotional development. Kelly and Wallerstein (1976) identified this age range as one of the groupings in their study of the effects of divorce on children.

We have experienced considerable difficulty in locating suitable subjects and, in fact, are still looking. The requirements of narrow and specific time since separation, children to be aged 6 - 8 at time of separation and matching have been very demanding and future researchers are warned! The difficulty in locating subjects has meant that we have obtained subjects from a variety of sources. A fortuitous side effect has been the lessening of systematic bias in the sample associated with a single source.

We began locating subjects by obtaining permission from the Queensland Education Department to approach families through the school system. Three large schools were chosen which were regarded as representing the range of socio-economic status. Only fifteen suitable subjects from separated families were obtained through this method even after a repeat request to the 1,500 families approached. Intact families were also asked to assist and many of these offered to be interviewed.

Next, efforts were made to obtain suitable separated families through appeals in the media. Radio and the newspapers were used and these yielded a further twelve subjects.

Finally, it was decided to approach the Family Court Principal Registrar asking permission to use Family Court records to obtain subjects. Permission was granted and since August, 1983, subjects have been approached asking for their co-operation. The Family Court in Brisbane uses their staff to identify families (using all court records) who fit broadly within the study criteria. These subjects are checked against a list of required subjects in the study. If the family matches the study requirements, then the Family Court sends a letter to the parent asking for co-operation. This process is slowly producing further subjects. With the benefit of hindsight, it now seems obvious that the most effective method of obtaining subjects - and the one involving least difficulty for the researchers - is to use Family Court records.

FINDINGS

In this section, results of the study to date are presented. Not all potential findings have been included. In particular the effects on the child of changes in family circumstances have not been analysed. The results are also presented for each group and no attempt has been made to present an analysis of sub-groups within the three groups studied. The major areas presented are:-

(1) The effects of the separation on the parent caring for the child.

(2) The effects on the child of the separation based on

- reports from the child's parent
- reports from the child's teacher
- information from interview with child.

(3) The family circumstances of the families and changes over time.

DESCRIPTION OF SUBJECTS

This analysis is based on 17 families who were in the 1 year separated category, 19 families in the 2-3 year separated category and 28 families in the intact family category. As further subjects are obtained, increased numbers and better matching will allow for more meaningful comparisons particularly between the two separated groups.

Although the research design provided for matching of subject children on sex, age and socio-economic status of the family, this has not been achieved in the subjects obtained to date. The following table shows the breakdown on sex of subjects.

Table 2: SEX OF SUBJECT CHILDREN IN STUDY

	Male	Female	
1 year sep.	10 (58%)	7 (42%)	17
2-3 year sep.	9 (47%)	10 (53%)	19
Intact	14 (50%)	14 (50%)	28

At time of interview children from the one year separated group were in the age range 7-9 years, while those in the 2-3 year separated group were in the age range 8-11 years. Therefore matching was required over the entire 7-11 year age range. Some attempt was made to sample in the middle of the range and this is reflected in the mean age of the subjects. (See Table 3).

Table 3: MEAN AGE OF SUBJECT CHILDREN IN STUDY

	Mean Age
1 year sep.	8.7 years
2-3 year sep.	9.8 years
Intact	9.7 years

It is in the variable of socio-economic status, based on parental employment and using the classification of Broom Duncan-Jones, Jones and McDonnell (1977), that the least equivalence is noted between the groups (see Table 4).

TABLE 4: S.E.S. OF CHILDREN (FAMILIES) USED IN THE STUDY

S.E.S. Ranking	1 year sep.	2-3 year sep.	Intact	% of General Population
1	4 (23.5%)	3 (15.8%)	5 (17.9%)	12.5%
2	3 (17.6%)	8 (42.1%)	8 (28.5%)	11.4%
3	1 (5.9%)	1 (5.2%)	1 (3.6%)	21.4%
4	4 (23.5%)	6 (31.7%)	7 (25%)	15.4%
5	3 (17.6%)	1 (5.2%)	3 (10.7%)	20.0%
6	2 (11.9%)	0 (0%)	4 (14.3%)	19.5%
	17	19	28	

The families of subjects used in this analysis are not equivalent in terms of socio-economic status and are of higher socio-economic status than the general population. This will be referred to in later discussion where relevant.

ANALYSIS

The responses were subjected to statistical analysis which compared the three groups of subjects (children and families) on each variable studied. Cross tabulation of each variable and the type of group was tested for association by use of a chi square test. The level of significance used in this study was .05.

Open ended questions were asked of subjects and the responses are used in this paper to provide qualitative information and augment the statistical findings.

EFFECTS OF SEPARATION ON PARENT

The parents interviewed from the separated families were asked to comment on the effects of the marriage breakdown on themselves. This was to ascertain their attitude since the effects for the child are influenced by the parental adjustment and their attitude to the family breakdown (Hetherington 1979, Parish & Dostal 1980). Table 5 details the responses of the parents and gives a very clear indication that parents tend to view the effect, for themselves, as positive.

TABLE 5: SELF REPORT OF EFFECTS OF SEPARATION ON PARENT CARING FOR CHILD

	Positive	Uncertain	Negative	
1 year sep.	11 (64.7%)	4 (23.5%)	2 (11.8%)	17
2-3 year sep.	15 (78.9%)	2 (10.5%)	2 (10.5%	19

(Significant .0001 level)

Some examples of responses parents gave to an open ended question about the effects of the separation on them were

1 year separated group:

- Sleeping better. Doesn't take medication now. More confident.
- Like being in hell at the time but now feel it has all been worth it.
- Should have done it a long time ago.
- Is better off now and his own master. No uncertainty or marriage problems. Has improved social contacts even though hard at first.
- Best I've been in my whole life. I like being independent and in control of my life even with all it's ups and downs.

2-3 year separated group:

- Positive. No way I could live with him. Suffers guilt because of religion. Mother says her "soul with burn in hell".
- "It was a release in a way. Traumatic at the time getting the courage to go. First year the worst. Second year was fantastic. Never look back now."
- Now over the pain but gradually built up confidence. Found new friends.
- Being able to be with new partner. The different personality of new partner means she feels appreciated as an individual.

The responses of the two groups to the open ended question convey different impressions although supporting the general trend that the separation has a positive effect on the parent. The 1 year separated group gave comments about the effects of the separation on them which suggest relief from the stress of the marriage. The 2-3 year separated group tend to give more cautious, but positive, responses about the effects of the separation on themselves. They are more willing to acknowledge the negative aspects of the experience. The qualitative data from this question thus suggest that the parents are coping with the separation but have some emotional stress in doing so, as well as (for some) a sense of relief at the separation. This supports the contention that the period prior to separation is a stressful one (Rosen, 1980) and deserves more focus as an area of intervention to support families.

EFFECTS OF SEPARATION ON THE CHILD

Information on the children was obtained from a number of sources. Parents were interviewed, teachers were interviewed, and the child was also interviewed. In this way, data about adjustment was obtained from a variety of knowledgeable sources.

PARENT INFORMATION RE CHILD

Parents were interviewed by using a structured questionnaire which obtained information on a number of measures relating to the child's adjustment.

Child's Behaviour

Parental reports of the children's general behaviour in the present are shown in Table 6. Parents were asked to state whether their children's behaviour was presenting problems (negative) or whether they were very pleased with their child's behaviour (positive). "Neutral" represented a mid-point between these two descriptions.

Table 6: CHILD'S BEHAVIOUR IN THE PRESENT

	Negative	Neutral	Positive	
1 year sep.	8 (47.1%)	2 (11.8%)	7 (41.2%)	17
2-3 " "	1 (5.3%)	6 (31.6%)	12 (63.2%)	19
Intact	2 (7.1%)	12 (42.9%)	14 (50.0%)	28
	11	20	33	

(Significant .002 level)

The differences between the groups were significant and indicate that the 1 year separated group of children are presenting with more behaviour problems in the present. The 2-3 year separated group show similarities with the intact group on this dimension and have a high proportion of the children (63%) whose behaviour is regarded as "positive" by their parents. This result would be expected since child behaviour has been shown to improve over time after separation (Hetherington, Cox and Cox, 1979). However, the finding in Table 7 concerning behaviour "pre-separation" on child behaviour causes the finding in this research to be questioned.

The question asked of parents concerning their child's behaviour "pre-separation"* elicited the responses as shown in Table 7.

Table 7: CHILD'S BEHAVIOUR "PRE-SEPARATION"

	Negative	Neutral	Positive	
1 year sep.	8 (47.1%)	4 (23.5%)	5 (29.4%)	17
2-3 " "	2 (10.5%)	11 (57.9%)	6 (31.6%)	19
Intact	2 (7.1%)	13 (46.4%)	13 (46.4%)	28
	12	28	24	

(Significant .008 level)

* Where "pre-separation" is used, it refers to the pre-separation for the two separated groups and for a period of two years previously for the intact group.

The results show that the 1 year separated group is significantly different from the 2-3 year separated and intact groups in the "pre-separation" period. This is an unexpected result which is difficult to explain. It may relate to the problem of recall of past events and their "colouring" by subsequent events. Some of the answers given by parents from the one year separated group to the question about the effects of the separation on them suggest that, while they are coping, they are doing so with some stress. This group may better recall the child's behaviour because it is more recent. The 2-3 year separated group classify a high proportion of their children in the "neutral" category - as opposed to the "positive" trend of the intact group and the "negative" trend of the 1 year separated group. This high use of this mid-range classification may reflect this group's better present management of their situation compared with the 1 year separated group.

School Progress

Parents were asked to comment on their children's school progress in the present and "pre-separation" using the three point scale of "positive - neutral - negative". There were no significant differences between the groups "pre-separation". However, school progress in the present showed a significant difference between the 2-3 year separated group and the other two groups (Table 8).

Table 8: CHILD'S SCHOOL PROGRESS - PRESENT

	Negative	Neutral	Positive	
1 year sep.	2 (11.8%)	2 (11.8%)	13 (76.5%)	17
2-3 year sep.	1 (5.3%)	9 (47.4%)	9 (47.4%)	19
Intact	0	5 (17.9%)	23 (82.1%)	28
	3	16	45	

(Significant .02 level)

This difference for the 2-3 year separated group is in terms of more "neutral" responses and fewer "positive" responses than the other two groups. Burns (1980) reports that the way a parent views the marital situation they have left has a large effect on how they perceive their children's current functioning. The 2-3 year separated group of parents when reporting the effects of the separation on themselves did so in a more cautious way and with more acknowledgement of the negative aspects of the experience. This may play a part in these parent's greater use of the "neutral" category and less use of "positive" than the 1 year separated group. This tendency in the 2-3 year group of parents is noted in many of the parental reports of their children's adjustment in this section.

CHILD'S PHYSICAL HEALTH

No significant differences were found between the three groups on this dimension in either the present or "pre-separation" periods. Both do approach the required level of significance and the trend is for the 1 year separated group to give more positive responses than the other two groups and for the 2-3 year group to use the "neutral" category to a greater extent (note the comment on this under school progress). All three groups reported an improvement in health over the period.

CHILD'S SOCIAL RELATIONSHIPS

This question examined the parents' perception of the child's social relationships. The question was asked using the two time periods of the present and "pre-separation". Parents were requested to locate their answer on the "negative - neutral - positive" scale. There were no significant differences between the groups in the "pre-separation" period. The responses for the present are shown in Table 9 and the more positive responses of the 1 year separated group are significantly different from the other two groups of children. It is necessary to consider the possibility, already discussed, of the one year group overestimating the positive aspects of their children's behaviour. This group may also be reporting positive behaviours because they expect more negative responses in their children. Obviously this aspect requires further examination. The similarity between the intact and 2-3 year separated group is also of interest and suggests a return of these children to normal social relationships. Hetherington, Cox & Cox (1979) found that children's social relationships at 1 year were disrupted but by 2 years, girls particularly showed no difference to children from intact families in play and social relations. Boys continued to show some differences.

TABLE 9: PARENTAL ESTIMATES OF CHILDREN'S SOCIAL RELATIONSHIPS - PRESENT

	Negative	Neutral	Positive	
1 year sep.	1 (5.9%)	1 (5.9%)	15 (88.2%)	17
2-3 year sep.	0	10 (52.6%)	9 (47.4%)	19
Intact	1 (3.6%)	[illegible] ([illegible].0%)	13 (46.4%)	28
	2	25	37	

(Significant .02 level)

CHILD'S EMOTIONAL HEALTH

Parents were asked to comment on their children's emotional health using the "negative - neutral - positive" scale over the two time periods of the present and "pre-separation". Table 10 details the responses of parents concerning their children's emotional health in the present. Since this is an area of considerable concern the information is included although there were no significant differences between the three groups in either time period. There also appeared to be little change over time.

TABLE 10: PARENTAL REPORTS OF CHILDREN'S EMOTIONAL HEALTH - PRESENT

	Negative	Neutral	Positive	
1 year sep.	4 (23.5%)	5 (29.4%)	8 (47.1%)	17
2-3 year sep.	5 (26.3%)	4 (21.1%)	10 (52.6%)	19
Intact	3 (10.7%)	11 (39.3%)	14 (50.0%)	28
	12	20	32	

(Not significant)

TEACHER INFORMATION RE CHILD'S ADJUSTMENT

The child's school teacher was questionned using a structured interview technique. It was assumed that the class teacher, who has frequent contact with the child, would be able to offer objective and informed data on the child.

Teachers were asked to rate the child on a number of variables. In none of the following variables was there a significant difference between the three groups.

- Child's involvement in class activities.
- Child's behaviour during class.
- Child's level of activity.
- Child's sharing with others.
- Child being outgoing.
- Child co-operative and eager.
- Child respectful of property of others.
- Child's involvement as a group member.

- Absence from school.
- Child's general health.
- Presence of any learning disability.
- Child performing to potential.
- Child referred to extra help (for problems) in the school.

PEER GROUP RELATIONSHIPS

Teachers were asked to rate the children on how well they related to their peers at school. Three categories were available, these being "well", "adequately" and poorly" but teachers did not use the "poorly" category at all. The results of the teacher responses are shown in Table 11 and represent the only significant findings in the questions analysed from teachers. The interesting feature of this result is that teachers tended to rate the children from intact families as functioning less well in peer relationships than children from separated families. This may reflect a greater peer rather than adult orientation in children from separated families. The finding tends to support Hammond (1979) who found no differences between children from intact and separated families on peer relations, or rather that these children do not function any worse than their counterparts from intact families.

TABLE 11: TEACHER EVALUATION OF CHILD'S PEER GROUP RELATIONSHIPS

	Well 1	Adequately 2	Poorly 3	
1 year sep.	11 (79%)	5 (31%)	0	16
2-3 year sep.	17 (90%)	2 (10%)	0	19
Intact	14 (52%)	13 (48%)	0	27

(significant .02 level)

Some suggestions have been made that teachers view children from separated families as different, in a negative sense, to children from intact families (Hammond 1979). The results from the present research do not support this contention. We noted when interviewing teachers that there was no tendency to "label" children from separated families.

Teachers were asked to categorize their comments about the children and as has been noted the results indicate no differences between children from separated and intact families. This confirms that children from separated families are coping even though their families have been through a significant restructuring. If teachers had been given an opportunity to respond to open-ended questions, they may have been able to give an impression of any stresses observed in these children. Parents when given this opportunity were able to add to the information provided in categories (see later in family circumstances section).

EFFECTS OF SEPARATION - INFORMATION FROM THE CHILD

Each child was interviewed using a structured interview technique which included some open-ended questions. In addition the children completed the Coopersmith self esteem inventory and the St. Lucia reading test. It should be noted that the children were not asked questions about the family breakdown. In this paper emphasis has been given to a few only of the areas covered in the children's questionnaire.

SELF ESTEEM

A self esteem measure (Coopersmith self esteem inventory) administered to the children showed no significant difference between the groups. The mean scores for each group are shown below (Table 12). This result is of great interest since it shows a similarity between the three groups. Raschke & Raschke (1979) report a similar finding in their comparison of children from divorced and intact families using the Piers-Harris self concept measure on children of similar age to those in the present study. Their conclusion was that there is no relationship between self concept in children and family structure. They did find however, that self concept was significantly less in children from families where conflict was present. Hammond (1979) also reports a similar finding on the lack of relationship between children's self esteem and family structure in his study of children from divorced and intact families. Raschke & Raschke (1979) state that children's self concept is positively related to parental happiness. This is supported in our study which shows a generally positive attitude by parents to the separation (Table 5).

TABLE 12: MEAN SCORES ON COOPERSMITH SELF ESTEEM INVENTORY

	Mean Score	N
1 year sep.	74.25	16
2-3 year sep.	77.15	19
Intact	74.00	26

(Not Significant)

CHILD'S ATTITUDE TO FAMILY

The children were asked whether they would like to change anything about their family. The results for this question showed a greater tendency for the separated groups to want some change but this difference is not significant. It is of interest to see how many children did want to see some changes in their family (Table 13).

TABLE 13: CHILDREN'S WISH TO SEE SOME CHANGE IN THEIR FAMILY - NOW

	Yes	No	
1 year sep.	10 (59%)	7 (41%)	17
2-3 year sep.	10 (53%)	9 (47%)	19
Intact	11 (39%)	17 (61%)	28

(Not Significant)

The comments made by the children as to what they would like to see changed (for those who responded "yes") is revealing. The abbreviated comments of all these children are presented below.

TABLE 14: CHILDREN'S COMMENTS ABOUT WHAT THEY WOULD LIKE TO BE DIFFERENT IN THEIR FAMILY

1 year sep.	2-3 year sep.	Intact
Father cease harassment	Family together again.	Less conflict in family
Conflict with sibling	Parents reconcile	Have 2 brothers
Conflict with sibling	Father return to home	Have a sister
Parents to reconcile	Less conflict in family	Conflict with sibling
Have nicer house	Father return to home	Conflict with sibling
Parents reconcile	Return of grown up siblings	Be only child
Parents reconcile	Parents reconcile	Be "spoiled" by parents
Mother return home	Parent go out more socially	Another sister
Less conflict in family	Parents reconcile	Siblings not to fight
Parents reconcile	Parents reconcile	Be oldest in family
		Not being "roused" on

A number of children from separated families have a wish to see the family unit reunited whereas the changes that children from intact families would like to occur are of a different quality. These children are concerned with sibling issues rather than parental matters. The comments of the children from the separated families appear to be in contrast to the high self esteem scores in Table 12. However, a distinction can be made between coping (such as reported in the school settings and from parental assessments) and the child's personal feelings or even grief about the family breakdown.

THREE WISHES EXPLORATION

Each child was asked to present three wishes that they would like to be granted. This was undertaken as a fantasy with the intention that it would bring out the child's hopes for him/herself. A wide range of answers were given. These were divided into three general categories and the three groups were compared (Table 15). The child's wishes were placed in one category only. Allocation to a category was determined by the major "flavour" or impression given by the three wishes.

It can be seen that the separated group gave more wishes concerned with family issues than did the children from intact families this difference being statistically significant. Some of the wishes mentioned by the children were for their original family to be together as a unit again. This tendency towards greater focus on family indicates a preoccupation with family issues for some 40% of the children from separated families. The responses in table 14 concerning the children's attitude to their family shows a similar preoccupation.

TABLE 15: CHILDREN'S RESPONSES TO "THREE WISHES" STIMULUS

	Possessions	Personal Changes	Family Related	
1 year sep.	7 (41%)	3 (18%)	7 (41%)	17
2-3 year sep.	8 (42%)	3 (16%)	8 (42%)	19
Intact	21 (75%)	5 (18%)	2 (7%)	28

(Significant .01 level)

FAMILY CIRCUMSTANCES OF THE CHILD

In the Introduction to this study it was argued that the family circumstances are an important context for the young child who has experienced family breakdown. This context mediates the effects of the marital separation for the child (Smiley & Goldsmith, 1981). The present focus on family circumstances gives attention to the social context of the family including the network supports, housing and finances, and the impact of the marriage breakdown on these areas.

SOCIAL NETWORK SUPPORTS FOR FAMILIES

CONTACT WITH RELATIVES

Families were asked about contact with extended family in the two time periods of the present and "pre-separation". There were no significant differences between the groups in either the "pre-separation" period or in the present. It is of interest that the groups showed very similar patterns of contact in the two time periods (Tables 16 and 17).

Table 16: FAMILY CONTACT WITH MATERNAL RELATIVES "PRE-SEPARATION" & PRESENT

	Frequent Contact		Infreq. Contact		None	
	pre-sep.	present	pre-sep.	present	pre-sep.	present
1 year sep.	6	5	10	10	1	2
2-3 yr.sep.	13	12	6	7	0	0
Intact	18	19	9	8	1	1

(Not significant)

Table 17: FAMILY CONTACT WITH PATERNAL RELATIVES "PRE-SEPARATION & PRESENT

	Frequent Contact		Infreq. Contact		None	
	pre-sep.	present	pre-sep.	present	pre-sep.	present
1 year sep.	6	5	9	9	2	3
2-3 yr.sep.	6	5	12	11	1	2
Intact	11	11	14	14	3	3

(Not significant)

This is a notable finding and suggests that extended family contacts are not greatly affected by separation. There is a tendency (not significant) for lesser contact with maternal family by the one year separated group even prior to separation than for the 2-3 year group or the intact group.

When asked about the quality of any changes in contact with family since the separation (see Table 18) a significant difference is noted between the separated groups and the intact group. The intact group reported very little change (3 families only). The two separated groups have a wider spread of responses and report both positive and negative changes in family contact.

Table 18: QUALITY OF CHANGES IN CONTACT WITH FAMILY SINCE SEPARATION

	Positive	No Changes	Negative
1 year sep.	3	11	3
2-3 year sep.	4	9	6
Intact	2	24	1

(Significant .03 level)

A sample of the answers to the open ended question, "What has been the major change in family relationships?" is presented below:

1 year separated group

- Now seeing less of paternal family.
- Lack of understanding between mother and paternal grandmother but separated mother and father are friends.
- Less contact with paternal family but more contact with maternal family.
- No change - never got on with her own mother anyway.

2-3 year separated group

- Better quality relationship with maternal family.
- Attitudes to mother because of separation from paternal and maternal. Rejection from both sides.
- Maternal grandparents more relaxed - they really didn't approve of husband.
- Growing independence of mother from her own family.

Intact group

- More contact with extended family as grandparents came to live in Brisbane.
- Two grandparents have died.
- Reduced contact with husband's mother.
- Some earlier difficulties are now being resolved. Relationships are improving.

From answers to the open ended question the separated groups would seem to have had much more change in relationships than have the intact group and in a more extreme way. The negative and positive changes are also apparent in the answers.

CONTACT WITH FRIENDS

A similar pattern to that of family contacts emerges from the questions on contacts with friends. Table 19 details the responses concerning contact with friends "pre-separation" and in the present.

Table 19: FAMILY CONTACT WITH FRIENDS - "PRE-SEPARATION" AND NOW

	Freq.Contact		Infreq.Cont.		None		
	pre-sep.	now	pre-sep.	now	pre-sep.	now	
1 year sep.	11	12	6	5	0	0	17
2-3 year sep.	12	14	6	5	1	0	19
Intact	17	16	10	11	0	0	28

(Not significant)

There are no significant differences between the groups and it can be seen that there is little change over the two time periods in frequency of contact.

However, when asked to report on the quality of any changes in contacts with friends, a significant difference emerges between the separated groups and the intact groups (see Table 20).

Table 20: QUALITY OF CHANGES IN CONTACT WITH FRIENDS SINCE "SEPARATION"

	Positive	No Change	Negative	
1 year sep.	11 (64.7%)	3 (17.6%)	3 (17.6%)	17
2-3 year sep.	9 (47.4%)	7 (36.8%)	3 (15.8%)	19
Intact	4 (14.8%)	20 (74.1%)	3 (11.1%)	27

(Not significant)

The separated groups report a higher level of increased positive contact with friends. This is probably related to the need for friendship support in the post separation period and demonstrates adaptation by these families in coping with the separation.

Researchers in the area of family breakdown refer to the importance of social network supports to separated families (Longfellow, 1979; Hetherington, 1979). Lolletta (1979) states that families under stress need high levels of support or they will perceive their situation in more negative terms. They will also be less competent at parenting. The literature on crisis theory highlights the importance of network support (Wiseman, 1975).

It would appear that the families studied in the present research have adequate supports from relatives and friends. Friendships are especially important to the separated group. Everly (1977) states that the separated parents who were coping in her study had networks of friends and relatives to call on. Spicer and Hampe (1975) comment that the presence of children increases the likelihood of continued contact with relatives of the ex-spouse. This is most noticeable when the child has contact with the absent parent.

Spicer and Hampe (1975) report the general finding that contact with the custodial parent's family usually increases after separation and contact with the absent parent's family decreases. This tends to be the situation with the families studied but the situation is confused somewhat because Table 18 does not define which parent's relatives are being discussed. The responses to the open ended question about the change in family relationships does, however, convey the trend.

FAMILY LEISURE

Families were asked to list changes in family leisure over the period since the separation (or equivalent time for intact families). There were no significant differences between the groups on this measure.

When asked to comment on their level of satisfaction with leisure activities in the present and "preseparation", important changes are noted. The level of satisfaction "preseparation" is significantly less for the separated groups compared with the intact group of families (see Table 21). This perhaps is not an unexpected result and probably reflects the dissatisfaction with the marriage relationship as well as the likelihood that in the pre-separation period the family may not have been functioning well as a unit.

Table 21: SATISFACTION WITH FAMILY LEISURE ACTIVITIES "PRESEPARATION"

	Yes	No	N
1 year sep.	3 (17.7%)	14 (82.3%)	17
2-3 year sep.	2 (10.5%)	17 (89.5%)	19
Intact	23 (82.1%)	5 (17.9%)	28

(Significant .0001 level)

Reports on satisfaction with leisure activities in the present show a similarity between the groups (Table 22) with no significant differences.

Table 22: SATISFACTION WITH FAMILY LEISURE ACTIVITIES - PRESENT

	Yes	No	
1 year sep.	14 (82.3%)	3 (17.7%)	17
2-3 year sep.	12 (63.1%)	7 (36.9%)	19
Intact	24 (88.9%)	3 (11.1%)	27

(Not significant)

FAMILY HEALTH

No significant differences were noted between the groups on parental reports of family health over the period from pre-separation to the present. All of the groups reported few problems with family health. However, the answers to the open ended question, "What has been the major change in family health over the period?" reveal some qualitative differences between the groups. Answers to the question were:

1 year separated group

- Child's health most affected.
- Other child suffered asthma before the separation but not now.
- More get up and go. No depression as there was after the separation.
- Child no longer suffers migraine. Mother better because there is less stress.
- Children O.K. but mother is now "nervy".

2-3 year separated group

- Before separation mother and eldest daughter close to nervous breakdowns. Now mother is better but exhausted. This is the reason why she changed from employment to the pension.
- Less stress on parent so her health has improved.
- Less emotional pressure.
- Basically healthy. Mother physically and mentally exhausted because she is on the go all the time.
- Other child is well and not deaf any more.

Intact group

- Mother's pregnancy.
- Father's improved health allows him to play more with child.
- Mother's allergies now controlled.
- Temporary deafness of husband.
- Some behaviour problems with two year old.

The intact group appear to be a stable group in terms of health with the minor positive and negative changes in physical health that one would expect. The two separated groups report a relief from the stresses of the period prior to separation and the separation itself. Only two parents stated that the stresses on them of coping alone affected their health.

USE OF CHILD CARE FACILITIES

Table 23 details use of child care facilities by parents at time of interview. The difference between the separated groups and intact group is significant.

Table 23: USE OF CHILD CARE FACILITIES - PRESENT

	Yes	No	
1 year sep.	7	10	17
2-3 year sep.	7	12	19
Intact	0	28	28

(Significant .0009 level)

The trend is for the separated families to use child care (both formal and prearranged informal) while intact families made no use of this facility.

In the period "preseparation" there was also a significant difference between the groups on use of child care. Table 24 details the responses to the question. The separated group used child care at that time to a greater extent than the intact group.

Table 24: USE OF CHILD CARE - "PRESEPARATION"

	Yes	No	
1 year sep.	5	12	17
2-3 year sep.	7	12	19
Intact	2	26	28

(Significant .03 level)

The difference between the intact group and the separated groups in the use of child care in the present is expected. A number of the separated families are single parent units. Spicer and Hampe (1975) report findings from their study that the parent in an intact family obtains their greatest support from their spouse whereas the single parent gets most support from relatives. This, especially if the single parent is working or has moved house recently, increases that parent's reliance on child care.

When the use of child care "preseparation" is considered, it is necessary to link this with a finding reported later, that the separated families in the "preseparation" period had proportionally greater numbers of families where two parents were in employment compared with the intact group.

HOUSING

There were no significant differences between the three groups on type of housing presently occupied, with the great majority living in a house (Table 25).

Table 25: HOUSING SITUATION - PRESENT

	House	Unit	Flat	
1 year sep.	15 (88.2%)	0	2 (11.8%	17
2-3 year sep.	18 (94.7%)	1 (5.3%)	0	19
Intact	28 (100%)	0	0	28

(Not significant)

The responses on housing "preseparation" showed that 100% of the 1 year separated group; 89.5% of the 2-3 year separated group; and 96.4% of the intact group lived in houses at that time. There was no significant difference between the groups on housing during the "preseparation" period.

It is worthy of comment here that Brisbane is a city where accommodation tends to be provided in houses. This city does not provide low cost high rise units. The relatively high socio-economic status of the sample subjects may also be a factor in this result (see Table 4).

METHOD OF PAYMENT FOR HOUSING

Comparison between the groups of families on the dimension of method of payment for housing for the period "preseparation" shows a significant difference between the groups (see Table 26). The intact group had a significantly higher number of families who had purchased their home. At the same time, more of the intact families were renting housing.

Table 26: METHOD OF PAYMENT FOR HOUSING - "PRESEPARATION"

	Purchased	Purchasing	Rent	No Cost	
1 year sep.	1 (5.9%)	13 (76.5%)	2 (11.7%)	1 (5.9%)	17
2-3 year sep.	1 (5.3%)	15 (78.9%	3 (15.8%)	0	19
Intact	7 (25%)	12 (42.9%)	9 (32.1%)	0	28

(Significant .05 level)

When viewed in the present, there is no significant difference between the groups in terms of method of payment for housing. This was the result of a slight movement away from purchased to purchasing in the intact group and a shift from purchasing to renting in the separated groups. The 1 year separated group showed the greatest increase in renting. It is of interest that the 2-3 year separated group did not appear to suffer the reduced level of home ownership noted in the 1 year separated group. The higher socio-economic status of the 2-3 year separated group compared to the 1 year separated group (Table 4) may account for this difference. However, the groups were equivalent in home ownership prior to the separation. Nevertheless Espenshade (1979) does report that the economic effects of separation are worse for lower socio-economic groups because they have fewer resources to cushion the economic demands upon them. The results on method of purchase of housing demonstrate the stable situation of the intact families over the time period.

CHANGES IN ACCOMMODATION

Each family was questioned concerning the number of changes in accommodation in the period since the separation (or over 2 years for the intact group). The results are shown in Table 27. The differences between the groups are significant and demonstrate the more stable situation of the intact group of families compared with the separated families.

Table 27: CHANGES IN ACCOMMODATION SINCE "SEPARATION"

	Number of changes in accommodation					
	0	1	2	3	4	N
1 year sep.	6	6	4	1	0	17
2-3 years sep.	10	5	1	1	2	19
Intact	23	3	2	0	0	28

(Significant .03 level)

The 2-3 year separated group of families had the largest spread of the three groups on this measure and this probably relates to the longer period of time involved compared to the 1 year separated group.

SATISFACTION WITH HOUSING

All families tended to state that their present housing met their needs. The question involved a "yes" or "no" response. Eighty-four per cent. of the 1 year separated group; 73.7% of the 2-3 year separated group; and 88.8% of the intact group responded with "yes". The differences between the groups were not significant.

Parents were asked an open ended question, "What has been the major change (in accommodation)?" Many parents reported no change but the following is a sample of comments from each group for those who responded to the question.

1 year separated group

- One parent carrying the cost of housing.
- Leaving the old home.
- We moved to a smaller house and no longer have a pool.
- The size of the house (smaller) and the fact that we are now renting.
- Move closer to friends - more support.
- Shift to house owned by new partner.
- Increased rental for a smaller flat.
- Facilities are better now but the cost is too great.

2-3 year separated group

- Move from a large home ... to a suburban home - children underfoot.
- This home is more suited to (children's) needs as a family. Mortgage is less and therefore less financial pressure.
- More room. We're living in the same suburb and child stayed at same school.
- Convenience for children to friends, school, etc.
- Rented house from mother's parents - now owned by her.
- Shift to smaller house. No permanency as waiting for final (property) settlement then will try to buy one.

Intact group

- Renovating house.
- Converted family room to bedroom for family.
- Moved to rented accommodation while waiting for new house to be built.
- Eldest son leaving home has made accommodation easier.
- Renovations, extensions and pool.
- Need house with yard.
- Redecorating.

A different sense of the accommodation is conveyed by the responses to the open ended questions. For those families that made any changes, the intact families are consolidating their accommodation and making improvements; the 2-3 year separated group feel some pressure but take a positive view of their situation; and the 1 year separated group convey a feeling of being under some stress in their housing but are coping.

It was expected that the separated groups would be disadvantaged in terms of type of housing as other writers have reported this finding (Bane, 1976; Espenshade, 1979). The responses in Table 25 do not support the findings of these other writers but if linked with the number of changes in accommodation and the responses to the open ended question on satisfaction with accommodation, it can be said that the separated group have suffered some deterioration in housing. The stability of the intact group is a constant theme in this section.

SOURCES OF INCOME AND EMPLOYMENT

Sources of income both in the present and prior to separation show a significant difference between the separated and intact groups. The difference is greater for the present and shows a high level, in the separated group, of dependence on non salary income (Table 28). Differences between the 1 year separated and 2-3 year separated group should be treated with caution because the 2-3 year separated group has a higher socio-economic status level than the 1 year separated group. From Table 28 we can infer that a larger proportion of parents heading separated families are not in the work force. There is a tendency for intact families to have one parent only in employment.

Table 28: SOURCES OF INCOME - PRESENT

	1 salary	2 salaries	soc.security	other	
1 year sep.	6 (35.3%)	1 (5.9%)	10 (58.8%)	0	17
2-3 year sep.	8 (42.1%)	1 (5.3%)	8 (42.1%)	2 (10.5%)	19
Intact	14 (51.9%)	8 (29.6%)	1 (3.7%)	4 (14.8%)	27

(Significant .005 level)

Although the differences between the groups is significant for sources of income in the period "preseparation", this difference is in terms of the number of parents in employment (see Table 29).

TABLE 29: SOURCE OF INCOME - "PRE SEPARATION"

	1 salary	2 salaries	soc. security	other	
1 year sep.	2 (11.75%)	12 (70.5%)	1 (6%)	2 (.75%	17
2-3 year sep.	10 (52.6%)	9 (47.4%)	0	0	19
Intact	16 (59.3%)	6 (22.2%)	1 (3.7%)	4 (14.8%)	27

(Significant .01 level)

The 1 year separated group is the most different of the three groups in the pre-separation period. This group of families tended to have two parents in employment. The intact group tended to have one parent in employment.

The movement in sources of income over the period "pre-separation" to the present indicates stability for the intact group. The two separated groups, not unexpectedly, moved towards use of social security benefits and away from two incomes.

CONCERNS ABOUT FINANCES

On the question of concerns about finances, families were asked about the present and the period "pre-separation". Table 30 shows the responses of the three groups. The differences between the groups are significant.

TABLE 30: MONEY CONCERNS - PRESENT

	Yes	No	
1 year sep.	10 (58.8%)	7 (41.2%)	17
2-3 year sep.	7 (36.8%	12 (63.2%)	19
Intact	2 (7.4%)	25 (92.6%)	27

(Significant .001 level)

The intact group reported few worries about finances whereas the separated groups expressed more concerns. The 1 year separated group tended to have the most concerns. Again the higher average socioeconomic status of the 2-3 year group should be considered in this comparison.

The responses on the question concerning money worries prior to the separation are presented in Table 31.

TABLE 31: MONEY CONCERNS - "PRE SEPARATION"

	Yes	No	
1 year sep.	10 (58.8%)	7 (41.2%)	17
2-3 year sep.	5 (26.3%)	14 (73.7%)	19
Intact	3 (11.1%)	24 (88.9%)	27

(Significant .002 level)

The most significant difference is between the 1 year separated group and the intact group. It is noted that in the pre separation period a high proportion of the 1 year separated group had 2 parents in employment. The 2-3 group appears to be more similar to the intact group.

Parents were asked to state what had been the major change in family finances since the separation, or over the past two years for the intact families. The responses to this open ended question are presented below -

1 year separated group :

- "More consistent income"
- "Change of breadwinner to mother"
- "Now in control of own budget and can spend where I feel it is needed"
- "Loss of second income"
- "Can't cope on the money she receives and the rent payable"

2-3 year separated group :

- Has a better say about expenditure of finances. Equality in relationship with new partner.
- More control.
- Now on one income only but standard of living not altered.
- Independence and security.
- Some increased dependence on maternal parents for crisis finances.

Intact group

- Improved finances due to low housing cost.
- Change because of selling previous home and buying a new one.
- Expenses higher because of new baby, but can manage.
- Employment of mother gives her more money and satisfaction.

The impression gained from the open ended questions supports the information in Table 31 that the intact families have a more stable and secure financial situation. The intact group has more resources to call on at times of difficulty and does not have the focus on survival that the separated groups appear to show. On the other hand, the separated groups report a sense of control over their financial lives even though in constrained circumstances. The 2-3 year separated group conveys an impression of greater security than does the 1 year separated group.

Colletta (1979) reports high levels of satisfaction in separated women even though they have low levels of income and suggests that parental sense of control over finances reduces the impact of stress on the family.

Parents in the present study tended to report that their independence from a difficult spouse and marriage gave them a better sense of control. Others reported satisfaction with the predictable payment of social security benefits. Espenshade (1979) suggests that marital separation has greater impact on those families with lower socio-economic status because they do not have the financial resources to cope with the financial costs involved.

DISCUSSION

There were two major foci in this study. The first was a direct assessment of the adjustment of the child. The findings indicate that there are a few differences between the children from separated families and those from intact families. There was a suggestion in the open ended question responses that the children, while coping in an objective sense, feel some concerns about family and are processing the emotional aspects of the family breakdown.

The second focus of the research was on the family context of the child. On a few measures the separated families show disadvantage compared with the intact families. The major areas of difficulty were related to finances, employment, housing, child care and family support. In each of these areas, the separated families showed some vulnerability.

In both family circumstances and adjustment of the child, the general impression given by the results is one of coping but with some stress in doing so. For the child, the stress is the loss of the intact family unit and emotional management of that experience. For the family unit, the stress is the reduced resources available to it.

The findings support the view of Levitin (1979) who argues for marriage separation and its effects on children to be given greater balance than the predominantly negative view assumed by many professionals and the community in general. In reviewing research findings, Levitin comments that, although marriage separation is a time of crisis for children, research shows that there are both positive and negative outcomes, mild and severe reactions and different effects for different children.

Conceptualisation of family breakdown as a crisis followed by a period of transition appears to us to be the way to explain the experience for children and families. Crisis involves both positive and negative possibilities and can lead to positive or negative outcomes (Bordow & Porritt, 1979). Most of the families in this study had sufficient resources to cope with the experience. The families who consistently showed as having negative outcomes have not been isolated at this stage in the research. It will be helpful to study these (and those who consistently do well) to understand their differences, and such analysis will be reported in a later paper.

Bordow and Porritt (1979) describe three broad areas of intervention in resolving crisis. These are:

(a) Practical support.
(b) Emotional support.
(c) Social network support.

Provision of assistance to separating families in all three of these areas of intervention is indicated. The present study has demonstrated the need for finance, child care, and possibly employment. Such practical matters appear from our study to be of as much importance as are other needs of this group. The research supports the findings of Bane (1976), Everly (1977) and Espenshade (1977) that economic disadvantage is an important consideration in marital separation.

The provision of emotional support to families after separation is readily understood. Our research shows the emotional stress parents feel before the separation. The period prior to separation is a part of the whole crisis and appears to be the time when parents report the greatest emotional stress. It is of interest to note here that Leupnitz (1979) in her study found that children also report similar high levels of stress in the preseparation period. The families as a whole require emotional support both before and after separation.

This leads into the third area of support, that which focuses on the social network. The parents in our study report an increase in contact with friends.

Families have been both supportive and unsupportive to the parents according to the parental reports. Groups such as Parents Without Partners can add to the network supports available. However, it would seem desirable for efforts to be made in strengthening the support given by extended family members to the separated family unit. The finding of Everly (1977) that separated parents who were coping had friends and relatives to call on is of relevance here. Spicer & Hampe (1975) also report that single parent family units derive their greatest support from relatives. The availability of supportive, involved relatives therefore seems to be an important goal in any intervention with separated families.

CONCLUSION

As a community we are observers of a significant social change which involves adaptation by the institution of marriage from that ideal of partnership for life to some new basis for relationship making. The present study and many other research findings lead to the view that a study of the effects of marital separation on children requires a conceptualisation of family breakdown as a complex life cycle event not necessarily wholly negative in its impact.

We have suggested that the effects for children can be understood in the context of crisis theory which proposes that there is a potential for positive development after the initial trauma of marital separation. Our research shows that the children and families studied demonstrate capacity for coping even though doing so with some stress. This stress is in relation to the child's emotional management of the experience and the reduced resources available to the family unit. It is apparent, therefore, that interventions to assist separating families should address these two areas with acknowledgement also that the family often experiences considerable stress in the period before the separation event.

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